



# **HEREFORD & WORCESTER Fire and Rescue Authority**

Special Audit Committee

## **AGENDA**

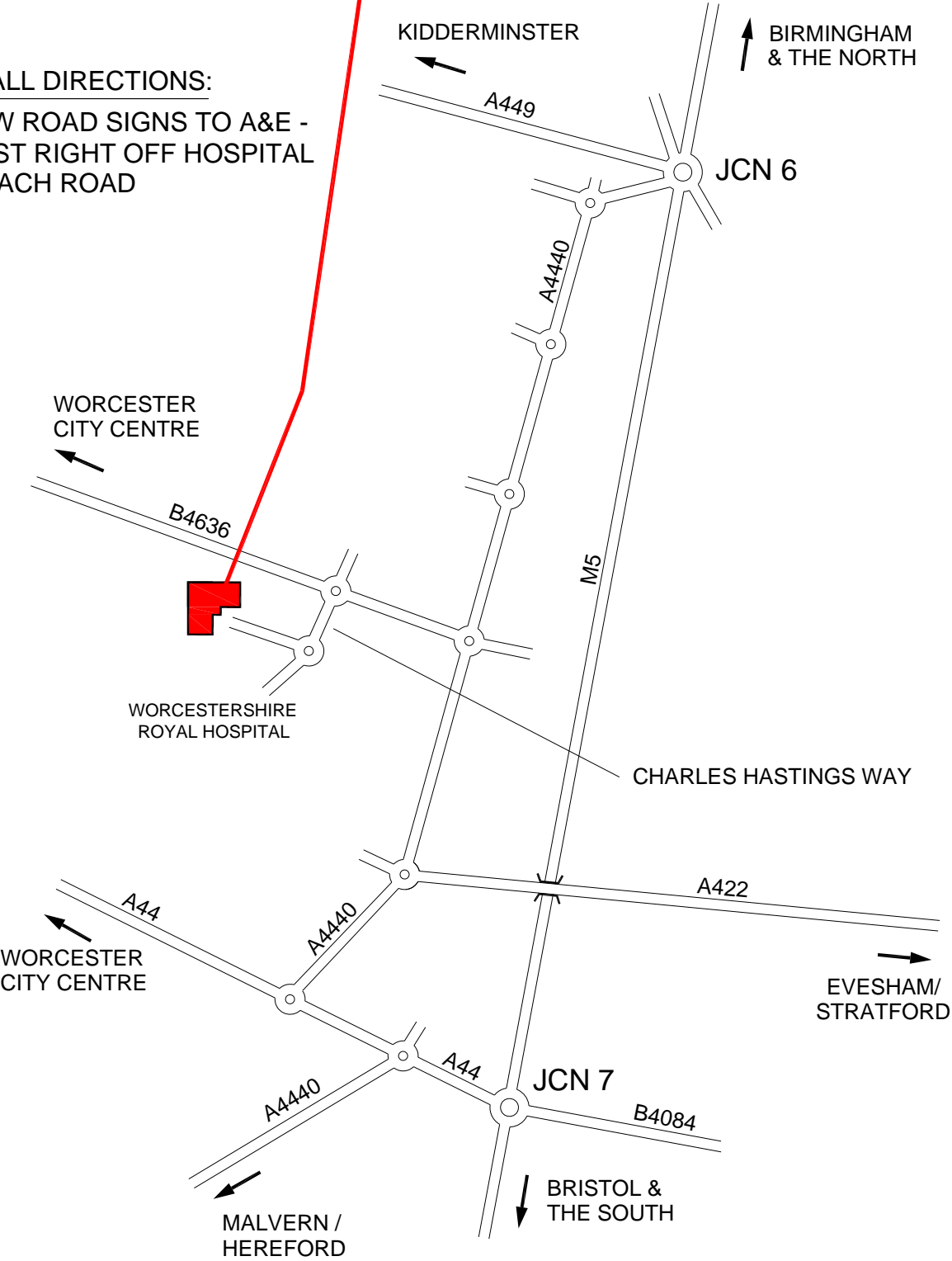
Monday 7 November 2011

2.00pm

Headquarters,  
2 Kings Court,  
Charles Hastings Way,  
Worcester  
WR5 1JR

HEREFORD & WORCESTER FIRE AND RESCUE SERVICE  
HEADQUARTERS  
2 KINGS COURT  
CHARLES HASTINGS WAY  
WORCESTER. WR5 1JR  
TEL: 0845 12 24454

FROM ALL DIRECTIONS:  
FOLLOW ROAD SIGNS TO A&E -  
HQ FIRST RIGHT OFF HOSPITAL  
APPROACH ROAD



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**WELCOME AND GUIDE TO TODAY’S MEETING.** These notes are written to assist you to follow the meeting. Decisions at the meeting will be taken by the **Councillors** who are democratically elected representatives and they will be advised by **Officers** who are paid professionals. The Fire and Rescue Authority comprises 25 Councillors and appoints committees to undertake various functions on behalf of the Authority. There are 19 Worcestershire County Councillors on the Authority and 6 Herefordshire Council Councillors.

### **Agenda Papers**

Attached is the Agenda which is a summary of the issues to be discussed and the related reports by Officers.

### **Chairman**

The Chairman, who is responsible for the proper conduct of the meeting, sits at the head of the table.

### **Officers**

Accompanying the Chairman is the Chief Fire Officer and other Officers of the Fire and Rescue Authority who will advise on legal and procedural matters and record the proceedings. These include the Clerk and the Treasurer to the Authority.

### **The Business**

The Chairman will conduct the business of the meeting. The items listed on the agenda will be discussed.

### **Decisions**

At the end of the discussion on each item the Chairman will put any amendments or motions to the meeting and then ask the Councillors to vote. The Officers do not have a vote.

## Agenda

### Members

Mrs L Duffy, (Chair), Mrs L Hodgson (Vice-Chair),  
Mr J Cairns, Mr D Greenow, Mrs G Hopkins, Mr B Matthews, Mrs F Oborski, Mr T  
Spencer, Mr J Thomas and Mr P Watts.

	<b>Pages</b>
<b>1. Apologies for Absence</b>	
To receive any apologies for absence.	
<b>2. Named Substitutes</b>	
To receive details of any Member of the Authority nominated to attend the meeting in place of a Member of the Committee.	
<b>3. Declaration of Interests (if any)</b>	
The Members' Code of Conduct requires Councillors to declare any interests against an Agenda item, the nature of an interest and whether the interest is personal or prejudicial. If a Councillor has a personal interest, they must declare it but can stay, take part and vote in the meeting. If a Councillor has a prejudicial interest then they must declare what that interest is and leave the meeting room for the duration of the item.	
This item allows the Chairman to invite any Councillor to declare an interest in any of the items on this Agenda.	
<b>4. Settlement of Outstanding Claim</b>	<b>1-6</b>
On 21 May 2010 the Authority gave officers delegated authority to negotiate and settle the legal claim made against the Authority by the outgoing Chief Fire Officer (OCFO) and the consequent claims against the constituent Councils.	
In doing so it agreed that a public report would be provided to Members at the conclusion of the matter. This report seeks to inform Members of the basis of the settlement reached by the Authority with both the OCFO and the constituent Councils.	
<b>5. Retirement of the Chief Fire Officer – Report from the District Auditor</b>	<b>7-46</b>
To provide the Committee with the report published by the District Auditor following his review of the additional net payment to which the Authority and its constituent councils are committed, following the early retirement of the former Chief Fire Officer.	

<b>6. Supplementary Annual Governance Report - 2009/10</b>	<b>47-56</b>
To provide the Committee with a copy of the External Audit Letter which supplements the Annual Governance Report 2009/10.	
<b>7. Supplementary Annual Governance Report - 2010/11</b>	<b>57-62</b>
To provide the Committee with a copy of the External Audit Letter which supplements the Annual Governance Report 2010/11.	

## **4. Settlement of Outstanding Claim**

### **Purpose of report**

1. On 21 May 2010 the Authority gave officers delegated authority to negotiate and settle the legal claim made against the Authority by the outgoing Chief Fire Officer (OCFO) and the consequent claims against the constituent Councils.
  2. In doing so it agreed that a public report would be provided to Members at the conclusion of the matter. This report seeks to inform Members of the basis of the settlement reached by the Authority with both the OCFO and the constituent Councils.
- 

### **Recommendations**

**The Chief Fire Officer, Clerk and Treasurer recommend that Members note the content of the report.**

### **Background**

3. On 17 September 2009 the OCFO, the Authority's then Chief Fire Officer, gave notice informing the Fire Authority of his decision to retire as from the 12 May 2010. Prior to submitting his notice the OCFO sought advice in writing from the Authority confirming his belief that he was able to retire and receive his pension on his 50<sup>th</sup> birthday without the permission of the Authority. The Authority responded by letter informing him that it agreed with his interpretation and that he had an unqualified right to retire and access his pension. He subsequently gave six months notice to retire.
4. Prior to the expiry of his notice, the advice provided to the OCFO was reviewed and it was decided it could not be relied upon. The OCFO was advised that should he retire at the expiry of his notice the Authority could not legally pay his pension. The OCFO with the support of his representatives and through his legal advisors brought a claim against the Authority for £1.2 million, which represented his loss of pension.
5. The Authority settled the claim with the OCFO paying him £100,000 compensation and agreeing to his retirement at the end of October 2010. In return the OCFO agreed to re-structure his pension provision to reduce the tax penalties imposed upon the Authority.
6. In addition to the settlement set out above the Authority will also be required to pay a tax penalty or scheme sanction charge of £54,955 to Her Majesty's Revenues and Customs (HMRC) over the next 4 years as a consequence of making the pension payment. The Authority has also incurred £62,903 in legal

and managerial costs in researching and negotiating the settlement with both the OCFO and constituent authorities. The OCFO received a salary with on costs amounting to £75,639 from 1 April 2010 up to his retirement in October 2010. A further £17,000 is expected to be paid in external auditor's fees.

7. Members will be aware that the original letter to the OCFO was researched and drafted by legal support (on behalf of the then Clerk) in conjunction with the then Treasurer. The services of the Clerk and Treasurer were at that time provided by Herefordshire Council and Worcestershire County Council respectively. The Authority sought to recover the costs incurred in settling the matter from the respective councils. In September of this year agreement was reached with the Councils each agreeing to pay £118,000 towards the costs incurred by the Fire Authority. This has left the Fire and Rescue Authority with a cost of £74,500 which has been met from the 2010/11 revenue budget. (The overall figures vary slightly from those contained within the External Auditor's report because his figures include costs wholly incurred by the constituent authorities).
8. Members will be aware of the basis of the problem which was explained at the Special Authority Meeting on 21 May 2010, however for the sake of completeness I have set out below the legal issues, which gave rise to the difficulties.
9. The advice centres upon the interpretation of the Firefighters' Pension Scheme 1992 and its interaction with new tax regulations.

### **Tax Provisions**

10. The Finance Act 2004 (FA 2004) changed the law in relation to retirement ages. The normal pension age was 50 up to 5 April 2010 and 55 after that date (s279 (1) FA 2004).
11. The FA 2004 created liabilities to tax known as "unauthorised payment charges" on employees and "scheme sanction" charges on employers where payments of pension are made to an employee whilst under the age of 55.
12. There are limited transitional arrangements that give exemptions from these tax penalties. Those exemptions apply where there is a registered pension scheme in place and that scheme allows for a member to retire as of right before his or her 55<sup>th</sup> birthday. The members' protected retirement age is defined as the age from which the member had an actual or prospective right to any benefit under a protected pension scheme on 5 April 2006 (paragraphs 22(8) and 23(8) Schedule 36 FA 2004 refer).
13. Her Majesty's Revenues and Customs (HMRC) is of the opinion that any right, which on its face is qualified in the sense that it is conditional on permission, cannot be construed as being an actual or prospective right. Manual RPSM 03106020, in describing the conditions for rights to take benefit under the age of 55, states: "*The rights must be un-qualified (in that no other party need consent to the individuals right before it becomes binding on the scheme or contract holder).*"

14. It is on this point that the OCFO's question concerning the interpretation of the legislation turned. In 2006 the OCFO was employed as a Chief Fire Officer and was a member of the Firefighters' Pension Scheme. The Firefighters' Pension Scheme is a registered scheme. The OCFO and the Authority will only benefit from the tax exemptions set out above if he can retire as of right without the Fire Authority's permission.

### **Pension Provisions**

15. The Firefighters' Pension Scheme was established under the Fire Services Act 1947. The relevant parts of the Firefighters' Pension Scheme 1992 are set out below.
16. Rule A13 states: "The normal pension age of employees of a Fire and Rescue Authority appointed on terms under which they are or may be required to engage in fire-fighting is 55".
17. However, Rule B1 (1) provides subject to paragraph (2), this rule applies to a regular firefighter who retires if he then –
  - (a) has attained the age of 50, and
  - (b) is entitled to reckon at least 25 years pensionable service, and
  - (c) does not become entitled to an ill-health award under rule B3.

B1 (2) this rule does not apply -

  - (b) unless his notice of retirement was given with the permission of the Fire and Rescue Authority, to a Chief Fire Officer or in Scotland a Fire Master, who retires before attaining the age of 55.

B1 (3) A person to whom this rule applies upon retiring becomes eligible for an ordinary pension.
18. In essence providing a firefighter has reached 50 and has 25 years service he or she can retire as of right with a pension and will benefit from the tax exemptions set out above. In those instances neither the employee nor the employer will incur any tax penalty. The problem arises because of the wording of B1(2)(b) above as a Chief Fire Officer may only retire and receive a pension with the permission of the Fire and Rescue Authority. On its face the pension scheme appears to require the OCFO to obtain the Fire and Rescue Authority's consent before he can retire and in such circumstance the exemption from tax would not apply and both the employee and Fire and Rescue Authority would pay significant tax charges.
19. There were, unfortunately, added legal complications which led to questions on the interpretation of the Pension Scheme. In addition to requiring the provision of a Pension Scheme, the Fire Services Act 1947 through the Appointment and Promotion Regulations also required the appointment of a Chief Fire Officer and defined the statutory rank and position of Chief Fire Officers. However, the Fire

and Rescue Services Act 2004 (“the 2004 Act”) revoked the 1947 Fire Services Act and the associated regulations in their entirety.

20. The 2004 Act brought with it a raft of regulations including the Appointment and Promotions Regulations 2004. These regulations, as from 25 March 2004, revoked the statutory rank of Chief Fire Officer. The new Act and consequent regulations introduced the concept of Brigade Managers. The overall aim of the new legislative provision was to consolidate a number of old ranks into fewer roles with pay differentials within that single role to reflect responsibility levels. The previously separate ranks of Assistant, Deputy and Chief Fire Officer were abolished and replaced with a new single statutory role of Brigade Management, however the terms continue to be used in all UK fire and rescue services.
21. The Firefighters’ Pension Scheme (Amendment) (England) Order 2005 (SI 2005 No 2980) which was introduced under the auspices of the 2004 Act replaced the references to pre-2004 ranks in the 1992 Pension Scheme with their post 2004 statutory equivalent. However, the 2005 Order did not change the reference in rule B1 (2)(b) from Chief Fire Officer to Brigade Manager.
22. The OCFO took legal advice and argued in his letter to the Authority that because the statutory position of Chief Fire Officer had been abolished, the provision within the Pension Regulations relating to the Chief Fire Officer was defunct and the regulations should be read as if the provision was not there. The reference to the new role of Brigade Manager was not introduced within B1 (2)(b), therefore as he would have over 25 years service on reaching 50 he could retire without the permission of the Authority and enjoy the tax exemptions that all other firefighters with the same years of service enjoyed. The Treasurer and Deputy Monitoring Officer considered this argument and in essence agreed with it. They took the view that the OCFO could retire without the permission of the Authority and that neither he nor the Authority would be subject to any tax penalties.

### **Review of the Advice Given**

23. Following the appointment of the in-coming Chief Fire Officer in February 2010 the Fire Brigade Union (FBU) raised concerns with the current Clerk in mid-March. The advice was reviewed and because of the significant potential financial risks that the Authority and the OCFO faced, advice from specialist Counsel was sought as to whether the rationale would be sustainable in any formal challenge by HMRC.
24. It is important to note that this area of law has not been tested in the courts and so no definitive ruling could be given however the advice of Counsel was that the requirement for permission to be granted by the Fire and Rescue Authority to the OCFO enabling him to receive (and empowering Authority to pay) his pension remains in force, and the advice that was given to OCFO to the contrary was probably incorrect. Counsel’s advice went on to say that the Authority does not have the power to pay any pension to the OCFO unless and until the requirements of the pension scheme are met, namely that the Authority has given permission for the OCFO to retire. If the Authority gave permission to

retire the unauthorised payment charges and scheme sanction charges would then apply.

25. Your officers have considered a range of options with Counsel to try and mitigate the financial impact upon the Authority.
26. The chosen option allowed the OCFO to retire with the permission of the Authority. In so doing the OCFO and the Fire and Rescue Authority will be subject to significant tax penalties but the OCFO has agreed to re-structure payment of his pension in a manner which will minimise the amount of penalty incurred. These measures have reduced the damages the Authority has been required to pay and enabled the Authority to settle the dispute on the basis set out in paragraph 5 and 6.

### Summary

27. On 21 May 2010, the Authority agreed that a public report would be provided to Members at the conclusion of the matter surrounding the retirement of the OCFO. This report seeks to inform Members of the basis of the settlement reached by the Authority with both the OCFO and the constituent councils. Members are asked to note the report.

### Financial Considerations

Consideration	Yes/No	Reference in Report i.e paragraph no.
There are financial issues that require consideration	Y	throughout

### Legal Considerations

Consideration	Yes/No	Reference in Report i.e paragraph no.
There are legal issues e.g. contractual and procurement, reputational issues that require consideration	Y	Throughout

### Additional Considerations

The table overleaf sets out any additional issues arising from the proposals contained in this report and identifies the relevant paragraphs in the report where such issues are addressed.

Consideration	Yes/No	Reference in Report i.e paragraph no.
<b>Resources</b> (e.g. Assets, ICT, Human Resources, Training & Development, Sustainability).	N	
<b>Strategic Policy Links</b> (e.g. IRMP, Authority Plan, Equality & Diversity, Partnerships, Environmental Impact).	N	
<b>Risk Management / Health &amp; Safety</b> (e.g. risk management and control measures, risk register score).	N	
<b>Consultation with Representative Bodies</b>	N	

### Contact Officer

Anne Brown Clerk  
01905 368331  
Email: [abrown@hwfire.org.uk](mailto:abrown@hwfire.org.uk)

## **5. Retirement of the Chief Fire Officer – Report by the District Auditor**

### **Purpose of report**

1. To provide the Committee with the report published by the District Auditor following his review of the additional net payment to which the Authority and its constituent councils are committed, following the early retirement of the former Chief Fire Officer.
- 

### **Recommendations**

#### ***The Clerk recommends that the Committee:***

- i) considers the report from the District Auditor, attached at Appendix 1;*
- ii) notes the recommendations made by the District Auditor and the subsequent response of the current Chief Fire Officer and Chairman of the Authority; and*
- iii) monitors the progress of the actions as set out in the attached report.*

### **Introduction and Background**

2. In November 2010, the Authority reached a settlement with the former Chief Fire Officer (CFO). As a consequence approximately £74,500 will need to be paid by the Authority to meet:
  - the tax penalties for making unauthorised payments;
  - the costs of professional advisers; and
  - to reach a compromise settlement of the claim for loss from the former CFO.
3. As a result of the financial loss and the level of public interest in how the situation arose, the District Auditor carried out an independent review of the decision making process followed by the Authority. The full and detailed report containing key findings, conclusions and recommendations is attached at Appendix 1.

## External Audit Recommendations

4. The District Auditor has put forward the recommendations below which are designed to help the Authority take itself further forward and assist it in minimising the risk of recurrence of the events in future:
5. **Recommendation 1:** The Authority should improve processes and arrangements in its governance arrangements (not operational) that could help safeguard the Authority against recurrence of a similar situation by:
  - having a Monitoring Officer (Clerk) and Treasurer who are not remote to the operations of the Authority;
  - ensuring there is a culture of open professional challenge and critical friends are available where officers are making key decisions; and
  - reviewing its policies and training arrangements to ensure they are supportive to this open culture and that appropriately address the perceptions and understanding of officers in situations where they believe the law or authority procedures are not being followed or where they believe officers may not have considered all options in forming a view.
6. **Recommendation 2:** The Authority should strengthen arrangements for ensuring the requirements of the Fire-fighters' Pension Scheme (FPS) are met by putting in place arrangements for the distribution of published guidance and circulars to appropriate officers.
7. **Recommendation 3:** The Authority should review the provisions within the Authority's service level agreements with its constituent bodies on a regular basis. This review to include the provisions for arrangements for the handling of disputes where the terms of the agreements have not been met and/or the performance of staff is below that expected to ensure appropriate safeguards are in place to protect the Authority's position.
8. The report attached at Appendix 1, includes an action plan with regards to the above recommendations, incorporating responses from the current Chief Fire Officer and Chairman of the Authority.

## Conclusion/Summary

9. The Committee is asked to consider the report attached at Appendix 1 which contains the key findings, conclusions and recommendations of the District Auditor following his investigation into the issues surrounding the retirement of the former Chief Fire Officer.
10. The Committee is also asked to note the recommendations, response from the current Chief Fire Officer and Chairman of the Authority and monitor the implementation of the actions set out in the action plan.

## Financial Considerations

Consideration	Yes/No	Reference in Report i.e paragraph no.
There are financial issues that require consideration	Yes	Appendix 1

## Legal Considerations

Consideration	Yes/No	Reference in Report i.e paragraph no.
There are legal issues e.g. contractual and procurement, reputational issues that require consideration	Yes	Appendix 1

## Additional Considerations

The table below sets out any additional issues arising from the proposals contained in this report and identifies the relevant paragraphs in the report where such issues are addressed.

Consideration	Yes/No	Reference in Report i.e paragraph no.
<b>Resources</b> (e.g. Assets, ICT, Human Resources, Training & Development, Sustainability).	Yes	Appendix 1
<b>Strategic Policy Links</b> (e.g. IRMP, Authority Plan, Equality & Diversity, Partnerships, Environmental Impact).	No	
<b>Risk Management / Health &amp; Safety</b> (e.g. risk management and control measures, risk register score).	Yes	Appendix 1
<b>Consultation with Representative Bodies</b>	No	

## Supporting Information

Appendix 1 – Retirement of the Chief Fire Officer – report by the District Auditor

## Contact Officer

Anne Brown, Clerk to the Authority  
(01905 368331)  
Email: [abrown@hwfire.org.uk](mailto:abrown@hwfire.org.uk)

# **Retirement of the Chief Fire Officer - report by the District Auditor**

**Hereford and Worcester Fire and Rescue Authority**

**Audit 2009/10**

**28 October 2011**

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# Summary report

## Introduction

**1** This report sets out the findings, conclusions and recommendations from my review of the additional net payment of £247,000 (in the form of tax penalties, settlement costs and professional advisers fees) to which Hereford & Worcester Fire and Rescue Authority (the Authority) and its constituent councils are now committed, following the early retirement of the Authority's former Chief Fire Officer (CFO).

**2** The Authority will bear £74,500 of the totality of these costs with the constituent councils meeting £122,500 each. Insurance arrangements have partially covered the estimated gross cost of £319,500 but there will still remain a significant loss of resources from the Herefordshire & Worcestershire public sector. The circumstances leading to these payments are complicated and technical in nature. My detailed report sets out the full detail. I have set out a brief summary of the events in the 'background' section immediately below.

**3** In summary, the Authority is making these payments because it believed it was not required to give its consent to the early retirement of its former Chief Fire Officer and it was argued that the former Chief Fire Officer relied upon information given to that effect to his detriment. Whilst not tested in the Courts the legal opinion it, and the constituent councils, have now received is that this belief was wrong. Whether this consent was required or not hinges on whether the role of the former Chief Fire Officer was properly defined as such within the Pension Regulations. This interpretation was complicated because of changes to the statutory definitions of roles within the fire service and changes to Her Majesty's Revenue and Customs (HMRC) interpretation of the normal retirement age. As a consequence of the incorrect interpretation the Authority was potentially liable for penalty charges under HMRC rules and additional tax is payable upon any pension payments made in the first five years of the former CFO's retirement.

**4** As a result of the financial loss and the level of public interest in how the situation arose I have carried out an independent review of the decision making process followed by the Authority. My principal objective was to consider whether the Authority had followed appropriate processes in confirming the outgoing CFO's right to retire and, once it had identified its error, that it had taken appropriate action. My key focus has been on identifying the key learning points for the Authority and constituent councils (Herefordshire Council and Worcestershire County Council).

## Background

**5** The Authority made an appointment to the role of Chief Fire Officer & Chief Executive in March 2005. He was a member of the Fire-fighters' Pension Scheme (FPS) and any observations, judgements and conclusions that follow relate to that scheme only.

**6** In August 2009 he wrote to the Chairman of the Authority formally stating his intention to retire when he became 50 in May 2010, by which time he would have completed more than 31 years of service. He sought confirmation of his understanding that he did not require the Authority's consent to retire at the age of 50.

**7** If the former CFO did require consent then any pension payable to him would not benefit from the FPS taxation concessions and the Authority and the former CFO could be subject to penalties and charges for making an 'unauthorised payment'. If it had been determined that the former CFO did need consent to retire then it is unlikely he would have followed that course of action because of the penalty implications.

**8** The view that consent was not required was given by the Authority and the former CFO gave notice in September 2009 of his intention to retire in May 2010 on his 50th birthday. The Authority appointed a new Chief Fire Officer in February 2010 who began his duties in April 2010.

**9** Subsequent to the appointment of its new Chief Fire Officer the Authority recognised that the view it had expressed to the former CFO may have been wrong and that its actions, based on its initial view, might have given rise to a large tax liability on the Authority and former CFO. The Authority took expert employment and tax counsel's opinion. These confirmed that its initial view was, on balance, probably incorrect. As a consequence the Authority recognised that it needed to take action to resolve the matter.

**10** In November 2010 the Authority reached a settlement with the former CFO that has enabled it to draw the matter to a close. As a consequence over the next five to six years approximately £247,000 that could have been used to support public services in Herefordshire and Worcestershire will now need to be paid to meet:

- the tax penalties for making unauthorised payments;
- the costs of professional advisers; and
- to reach a compromise settlement of the claim for loss from the outgoing CFO.

## Key findings and conclusions

**11** The Authority, through its Chairman, acted reasonably in seeking advice from its statutory officers (Treasurer and Clerk) when the former CFO asked whether he had an 'unqualified' right to retire.

**12** The key issue for the Authority to determine was whether the former CFO was both a Brigade Manager and a CFO under the pension scheme rules. In August 2009 the Deputy Monitoring Officer (DMO) asked the Treasurer of the Authority to examine the Pension Regulations relating to the outgoing CFO's pension position. The Treasurer, having consulted the Pensions Team at Worcestershire County Council informed the Deputy Monitoring Officer that the former CFO's pension position had been reviewed. This review, from a responsible financial officer's perspective, led to the conclusion that he had an 'unqualified' right to retire and did not need the consent of the Authority.

**13** The DMO, an experienced employment lawyer, had satisfied himself that the former CFO's interpretation in his letter to the Chairman was not inconsistent with the law. Once the Treasurer had reached a similar conclusion the DMO drafted a letter for the Chairman. There was no indication within the letter that highlighted any particular problem with the statutory framework or suggestion that this was a complicated area of law on which the Treasurer or DMO might have some doubt. In my view, the Chairman therefore had no reason to question the conclusions reached and it was reasonable for him to send the letter on behalf of the Authority. On 14 September 2009 the Chairman of the Authority therefore wrote to the former CFO advising, that having consulted the Authority's Legal Advisor and Treasurer (words used in the letter), an unqualified right to retire existed.

**14** However, this was a unique issue with significant risks and implications. It is therefore unlikely the Authority will have to deal with a matter of this nature or magnitude very frequently. Whilst I must take care in applying hindsight, in my view the Treasurer and Deputy Monitoring Officer (DMO) should have better recognised the full potential complexity of the issue in August 2009. By concluding that there was no requirement to seek specialist legal views, to discuss the matter with employment experts including the tax office (HMRC) or seek the specific views of the Clerk at that time it put in train the series of events that led to the Authority needing to settle the matter.

**15** The conclusion that the former CFO had an 'unqualified' right to retire was not subject to more rigorous challenge because of weaknesses that have now come to light in the way the Authority's governance arrangements operated in practice between its statutory officers at the time the decision was taken.

- The Clerk to the Authority at the time placed reliance upon the judgement of the DMO to bring significant issues that she would need to be aware of her to attention and the fact that the Clerk was not formally

consulted on the final conclusion or letter from the Chairman to the former CFO is indicative, in my view, that the relationship of the former Chief Fire Officer and Treasurer with the Clerk was, in practice, distant.

- As a result the Treasurer therefore played a prominent role within the governance structure given his knowledge, experience and expertise leading to an over reliance upon his interpretation of the FPS rules.
- If the arrangements for communication between the Treasurer and the Clerk on significant issues had been stronger, and the Clerk therefore more directly engaged in the decision making, there is a probability that there would have been a greater recognition of the risks and external legal advice might have been sought at the time.

**16** In November 2009, shortly after accepting the former CFO's notification to retire, updated guidance from the Department of Communities and Local Government was received highlighting the potential issues for individuals. This provided an opportunity to revisit the original conclusion. I accept that the Treasurer reviewed the guidance and remained confident that in his professional view he did not believe it impacted upon his original conclusions as it was consistent with the questions he had already addressed. However, in my view the fact that:

- the opportunity to seek an independent view was not considered;
- the Clerk was not contacted; and
- that other officers did not take their concerns further,

is potentially indicative that a culture of full openness and recognition of the value of challenge was not in place. This was potentially compounded by the one step removal of both the Treasurer and the Clerk from the Authority.

**17** The Authority receives this type of guidance and circulars in relation to pension matters electronically from the Department for Communities and Local Government (CLG). There was no structured arrangement in place for the distribution of these, particularly to the Clerk. The arrangements for circulating electronic instructions and guidance on the Firefighters' pension scheme could therefore have been improved and the Authority has now taken action to address this.

**18** If all aspects of the arrangements for the decision making process had worked properly at the time then it is possible that the Authority could still have reached the same conclusion that the outgoing CFO had an 'unqualified' right to retire. However, had they been fully informed at the outset that the CFO could not retire unless they consented and that giving consent would give rise to the tax charge then it is likely neither the Authority, nor the outgoing CFO, would have made that decision. There were key points in the timeline where different decisions could have been taken, but it is impossible to know whether any of these would have led to a different outcome. However, there are lessons that can be learned from the process that was followed that have a bearing on how future decisions are made for significant issues.

**19** Once it became aware that it might have significant liabilities the Authority managed the negotiations of the settlement well. However, the Authority should review the provisions within its service level agreements with its constituent bodies on a regular basis to ensure they cover the handling of disputes and that appropriate safeguards are in place to protect the Authority's position.

**20** The resolution of the position in respect of the former CFO has been a long running matter. Since his appointment in April 2010 the new Chief Fire Officer has taken responsibility for ensuring any learning from the issue is acted upon. Under his leadership the Authority has already made some improvements to its governance arrangements. In September 2010 it appointed an 'in-house' Treasurer on a short-term contract. An interim Deputy Monitoring Officer has now been appointed as Clerk on a fixed term contract. Both of these roles are more closely integrated into the Authority. The Authority has also carried out a review of its committee arrangements in order to ensure they remain the most efficient and effective for its operational delivery.

**21** Part of the legacy of this matter is that it has absorbed time, energy, attention and money. The Authority needs to move on to making longer term arrangements and I would encourage all Members of the Authority and constituent councils and officers to continue to build positive working relationships that will benefit the people of Herefordshire and Worcestershire.

## Recommendations

The three recommendations below are designed to help the Authority take itself further forward and assist it in minimising the risk of recurrence of the events which went wrong in this case.

### Recommendations

- R1** The Authority should improve processes and arrangements in its governance arrangements (not operational) that could help safeguard the Authority against recurrence of a similar situation by:
- having a Monitoring Officer (Clerk) and Treasurer who are not remote to the operations of the Authority;
  - ensuring there is a culture of open professional challenge and critical friends are available where officers are making key decisions; and
  - reviewing its polices and training arrangements to ensure they are supportive to this open culture and that appropriately address the perceptions and understanding of officers in situations where they believe the law or authority procedures are not being followed or where they believe officers may not have considered all options in forming a view.

## Recommendations

- R2** The Authority should strengthen arrangements for ensuring the requirements of the Fire-fighters' Pension scheme (FPS) are met by putting in place arrangements for the distribution of published guidance and circulars to appropriate officers.
- R3** The Authority should review the provisions within the Authority's service level agreements with its constituent bodies on a regular basis. This review to include the provisions for arrangements for the handling of disputes where the terms of the agreements have not been met and/or the performance of staff is below that expected to ensure appropriate safeguards are in place to protect the Authority's position.
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## Next steps

- 22** I have discretion as District Auditor to determine whether the matters raised with me are of such significance that I should issue a report in the public interest. I have determined that this would not be appropriate in this instance on the basis that:
- the findings of my review have been part of an ongoing dialogue with the Authority and it has handled the matter in an open and transparent manner;
  - the Chief Fire Officer and Chairman of the Authority have set out their response and the actions taken to address the recommendations above in appendix 3; and
  - the Authority has proposed to receive my report at an open public meeting, the agenda and minutes of which will in due course become public documents.
- 23** I will monitor the effectiveness of the Authority's improvement as part of my ongoing audit work. I would also like to express my thanks to Members and officers of Hereford & Worcestershire Fire and Rescue Authority and the constituent councils and the former CFO, Treasurer and Monitoring Officer for the positive way in which they have co-operated and assisted with my review.
- 24** In conducting my review I have had access to documents and information held by the Authority and constituent councils including legal advice, minutes and reports that the Authority has deemed exempt from publication.

# Detailed report

## Introduction

**25** In November 2010 Hereford and Worcester Fire and Rescue Authority (the Authority) reached a settlement with its outgoing Chief Fire Officer & Chief Executive regarding arrangements made for his retirement. As a consequence over the next five to six years approximately £247,000 that could have been used to support public services in Herefordshire and Worcestershire will now need to be paid to meet:

- the tax penalties for making unauthorised payments;
- the costs of professional advisers; and
- to reach a compromise settlement of the claim with the outgoing CFO.

**26** As a result of the financial loss and the level of public interest in how the situation arose I agreed with the Authority that I would carry out a thorough review of the decision making process followed by the Authority. My principal objective was to consider whether the Authority had followed appropriate processes in confirming the outgoing CFO's 'unqualified' right to retire and, once it had identified its possible error, that it had taken appropriate action. My key focus has been on identifying the key learning points for the Authority and constituent councils.

**27** In reviewing this matter my work involved:

- interviews with relevant current and former Authority officers;
- review of the legal advice given to the Authority and constituent councils both internally and externally, including the comprehensive opinions provided by expert employment law and tax Counsels; and
- review of many relevant documents including letters and emails.

## Background

**28** The Authority appointed a new Chief Fire Officer & Chief Executive in March 2005. He is referred to as the 'outgoing CFO' throughout this detailed report. He was a member of the Firefighters' Pension Scheme (FPS). This scheme closed to new members in April 2006.

**29** On the 4 June 2009 he communicated his intention to retire at the age of 50, in May 2010, to the Chairman of the Authority, by which time he would have completed more than 31 years of service. In August 2009 he wrote to the Chairman of the Authority restating his intention to retire and seeking the determination of the Authority regarding his employment and pension provision and of his understanding that he did not require the Authority's consent to retire at 50. If he did require consent then any pension payable to him would not benefit from the FPS taxation concessions and the Authority could be subject to penalties and charges and he would not have proceeded with the retirement.

**30** The Authority's view that consent was not required was given and the outgoing CFO gave notice in September 2009 of his intention to retire in May 2010 on his 50th birthday. On this basis the Authority proceeded with both the retirement of the outgoing CFO and the recruitment of a new Chief Fire Officer who was appointed in February 2010 and who began his duties in April 2010.

**31** Following the appointment announcement, in late March 2010, the Fire Brigade's Union (FBU) raised queries with the Authority about the interpretation of the FPS Rules in respect of the outgoing CFO's retirement. A review of the issue at that time by the new interim DMO indicated that the view it had given to the outgoing CFO may have been wrong and that the Authority's actions might have given rise to a large tax liability. The Authority appointed legal Counsels to review the legislation of the Firefighters' Pension Scheme and taxation of pensions paid in the 2010/11 tax year.

**32** There are four Queen's Counsels' (QCs) opinions which have been taken either by the Authority itself or the constituent councils on various aspects of this case. There is some degree of agreement between them but there are also material differences of opinion between Counsel. The Authority's Counsel advised it that this was a complex area and that overall there was a risk that if the matter went to court and the Authority lost that it may have to:

- make full recompense to the outgoing CFO and meet his legal costs; and
- possibly meet some or all of the legal costs incurred by the constituent Councils and the tax authority, HMRC.

**33** As a result the Authority sought to settle the matter out of Court. This was finally reached in late November 2010. As part of the settlement the former CFO agreed to receive his pension in a manner which minimised the cost to the public sector. The Authority and the constituent councils have paid the legal fees they have incurred arising from this issue. It has taken until September 2011 for agreement on how these costs might be met by each body to be reached. The total liabilities arising from the issue are estimated to be £319,500. These will be met £122,500 by each of the constituent bodies and £74,500 by the Authority. Because of insurance arrangements at Herefordshire County Council the total loss of monies to the local public sector will be reduced to £247,000.

# What was the issue and the Authority's arrangements to handle it?

## What was the issue?

**34** Regular firefighters employed before 6 April 2006 were eligible for membership of the Firefighters' Pension Scheme (FPS). It became a closed scheme on 6 April 2006 when the New Firefighters' Pension Scheme (NFPS) was introduced. The outgoing CFO was a member of the FPS and any observations, judgements and conclusions that follow relate to that scheme only.

**35** As with all occupational pension schemes the operation of the FPS is based upon a set of rules. The rules of the FPS (in common with most pension schemes) have been amended on many occasions since that date. Ensuring the proper administration and payment of individual pensions and benefits in accordance with these rules is the responsibility of fire and rescue authorities.

**36** The FPS is a registered pension scheme for the purposes of the Finance Act 2004. This means that HM Revenue and Customs (HMRC) allow certain tax concessions. However, failure to comply with the FPS rules or Pension or Finance Acts could lead to HMRC determining that an unauthorised payment had been made. The payment of an unauthorised payment will generate up to three tax penalties.

**37** Her Majesty's Revenue and Customs (HMRC) has posted guidance on its website in respect of the normal minimum pension age being increased from 50 to 55 from 6 April 2010. After that date pension payments from a registered pension scheme can only be given without penalty when the member is aged 55 or older.

**38** The exceptions are where they receive early retirement on grounds of ill health or they are allowed to start their pensions from a lower protected pension age under the pension scheme rules. However, to qualify for a protected pension age, the right to a pension before age 55 must be "unqualified" (in that no other party needs to consent to a request to take benefits before it becomes binding upon the scheme or contract holder).

**39** The fundamental issue upon which this report is focussed is how Hereford & Worcester FRA reached its conclusions on the interpretation of one of these rules, namely Rule B1 on Ordinary Pensions, as providing the outgoing CFO with an 'unqualified' right to take pension benefits under the scheme's rules.

## Governance arrangements

**40** Hereford & Worcester FRA was created in 1997. Its services were previously provided by Hereford & Worcester County Council. It is therefore still a relatively young organisation. Its members are drawn from the constituent local authorities, namely Worcestershire County Council (WCC) and Herefordshire Council (HC). The arrangements for the statutory positions of:

- Treasurer (officer with responsibility for the administration of the Authority's financial affairs under section 112 of the Local Government Finance Act 1988); and
- Clerk (exercising those functions of Monitoring Officer, as required by the Local Government and Housing Act 1989),

followed on from the shadow arrangements in place prior to the formal constitution of the Authority and were provided by Worcestershire County Council and Herefordshire Council respectively. This type of arrangement is not unusual but does require communications and delegations to be well managed.

**41** The Treasurer role had been filled by the Director of Financial Services from Worcestershire County Council since the beginning of the Authority up until July 2010. This also included the administration of the Authority's payroll and pension services under a Service Level Agreement (SLA) with the County Council. The Treasurer was very experienced, knowledgeable and respected by his peers. The Treasurer did not benefit personally from this position but the Council recharged the Authority for his time.

**42** The Clerk role at the time of the decision making on the outgoing CFO was complicated by the fact that Herefordshire Council's permanent Monitoring Officer (MO), who was also the Clerk to the Authority, left the Council in June 2009. Herefordshire Council had appointed a Monitoring Officer in June 2009 on a short-term contract and in the same month she was appointed by the Authority to the role of its Clerk (Monitoring Officer).

**43** Herefordshire Council's MO had undertaken the role of a short-term MO for other organisations and was therefore very experienced in the role. An MO appointed on a short term or interim arrangement such as this has all the rights, responsibilities and duties of a permanent appointee to that role. Given the scope of the role she has stated that, in practice, it was not possible for her to fulfil the role of Clerk to the Authority, on a day-to-day basis at the Authority, personally. Therefore she had delegated discharge of the day-to-day duties to HC's Legal Services Manager, who acted in the role entitled Deputy Monitoring Officer (DMO) and provided the administrative clerking role to the Authority.

44 The Clerk has confirmed that she was satisfied that she could place reliance upon Herefordshire Council's legal team and the Authority's arrangements (as independently reviewed by the Authority's Internal Audit arrangements). She has also confirmed that she met with Authority representatives to ensure these delegated arrangements were in place but she never met with the outgoing CFO during his tenure. She was therefore satisfied that the arrangements at the Council and at the Authority, and between the two, were sufficiently robust to allow her to rely on advice given by the Council (through the DMO) to the Authority.

#### **District Auditor's assessment**

45 In my view, given the above arrangements and the high profile nature of the decision being taken, I am of the view that it would have been reasonable to expect that whichever statutory officer took a lead on the matter that the other would have been kept fully informed and in agreement with any conclusions drawn. The above indicates that the professional relationships between the outgoing Chief Fire Officer, Treasurer and Clerk were, in practice, too distant. It is also my view that the Clerk was placing significant reliance upon the judgement of the DMO to decide which matters were particularly significant and which she might need to be aware of and then to draw her attention to them. This inherently weakened the arrangements further.

## How was the original conclusion reached and was it reasonable?

**46** Rule B of the FPS permits a fire-fighter aged at least 50 and with 25 years pensionable service to retire without the consent of his employer unless he is a Chief Officer aged between 50 and 55 in which case he needs consent. The Chief Officer (CO) appointment was a statutory appointment until the obligation to employ a CO was revoked by regulations in 2004. The position previously held by the CO is now 'Brigade Manager' which is also a statutory office. The new title 'Brigade Manager' encompassed the old rank of both CO and assistant CO type ranks although those officers had never been COs. In these regulations the rank or designation of Chief Officer has disappeared completely.

**47** These changes to designations and the statutory officer framework were imported to the FPS and NFPS in further regulations that came into force in November 2005. These regulations amended rule B referred to above substituting the expression 'Chief Officer' with 'Chief Fire Officer' as shown in table 1 below.

Table 1: **Eligibility for ordinary pension under Rule B1**

Criteria	Definitions
Eligibility for an ordinary pension	<p>Rule B1(1) explains that in order to be entitled to immediate payment of an ordinary pension, ie the standard age retirement pension, a member must:</p> <ul style="list-style-type: none"> <li>■ be a regular firefighter;</li> <li>■ retire;</li> <li>■ have attained age 50;</li> <li>■ be entitled to reckon at least 25 years' pensionable service; and</li> <li>■ not be entitled to an ill-health award under Rule B3.</li> </ul>
Exclusions	<p>Even if a member satisfies the above conditions, Rule B1(2) prevents payment of an ordinary pension if:</p> <ul style="list-style-type: none"> <li>■ a member has elected to opt out of the Scheme and that election still has effect, or</li> <li>■ a member is leaving ('retiring') to take up employment with another fire and rescue authority (see 'Points To Note', Point 1), or</li> <li>■ a member is a Chief Fire Officer, and</li> </ul>

Criteria	Definitions
	<ul style="list-style-type: none"> <li>- has not attained age 55, and</li> <li>- does not have his/her fire and rescue authority's permission to retire.</li> </ul>

*Source: CLG Guidance Note B1*

**48** The Chief Fire Officer (CFO) was still subject to a consent requirement if retiring between the ages of 50 and 55. There was however a mismatch in the two sets of Regulations, the first set referring to Brigade Managers whilst the second referred to CFOs. The effect was that there was no longer a formal statutory rank and position of CFO in the Fire Service although there was an officer who equated to that position and who, at least in the case of the outgoing CFO was both recruited as, and used the honorific title of, CFO. Under the pension regulations a Brigade manager could retire without consent but a CFO could not.

**49** The outgoing CFO met with the Chairman of the Authority on 4 June 2009. The purpose of the meeting was to review his annual personal development. At the meeting the outgoing CFO expressed his intention to retire in May 2010 having attained age 50 and accumulating more than 31 years service.

**50** On 17 August 2009 the outgoing CFO wrote to the Chairman of the Authority confirming his intention to retire and seeking from the FRA, as his employer, confirmation of his understanding that he had an 'unqualified' right to retire and reiterating that the determination of his employment and pension position was a statutory responsibility of the Authority. The letter from the outgoing CFO contained a detailed commentary to support his understanding and, in my view, is indicative that he had sought his own independent advice before writing. Given the complexities of the position the Chairman, quite properly in my view, sought the advice of the Authority's two statutory officers the Treasurer and the Clerk (through the Deputy Monitoring Officer).

**51** The outgoing CFO was appointed to his role of Chief Fire Officer & Chief Executive of the Authority in March 2005, after the statutory role of CFO was abolished. But the advert referred to a CFO and he was known, throughout his tenure, as the CFO. His headed paper etc carried that title. Although the statutory title of CFO was defunct it was habitually used by the most senior Brigade Officer as an honorific and for reasons of tradition. In my view, whatever the title it is agreed that the outgoing CFO was the most senior brigade officer.

**52** That being so the key issue for the Authority to determine was whether the outgoing CFO was a Brigade Manager and CFO under the pension scheme rules. On 26 August 2009 the Deputy Monitoring Officer asked the Treasurer of the Authority to examine the Pension Regulations relating to the outgoing CFO's pension position. On 28 August 2009 the Treasurer informed the Deputy Monitoring Officer that the outgoing CFO's pension position had been reviewed. This review led to the conclusion that the outgoing CFO had an 'unqualified' right to retire.

**53** On 14 September 2009 the Chairman of the Authority wrote to the outgoing CFO advising, that having consulted the Authority's Legal Advisor and Treasurer (words used in the letter), an unqualified right to retire existed. The letter was drafted by the Deputy Monitoring Officer. There was no indication within the letter that highlighted any particular problem with the statutory framework or suggestion that this was a complicated area of law on which the statutory officers might have some doubt. In my view the Chairman (and the outgoing CFO on its receipt) therefore had no reason to question the conclusions reached and it was reasonable for him to send the letter on behalf of the Authority.

**54** On 17 September 2009 the outgoing CFO gave qualified notice to the Authority of his intention to retire on 12 May 2010. The Authority formally acknowledged, on 5 November 2009, his notice of his intention to retire and commenced the recruitment of a successor.

### **Treasurer's interpretation**

**55** In an Appendix to a report to the Authority on 21 May 2010 the Treasurer identified that in the glossary of expressions provided in Schedule 1 to the Consolidated Firefighters' Pension Scheme 1992 Order (February 2008) there is no reference to the expression 'Chief Fire Officer'. The glossary in paragraph (b) uses the word role. There is no reference to rank. There is a reference to the expression regular firefighter but there is no reference at all in the glossary to the most senior regular firefighter.

**56** In his view, as the responsible financial officer, there was no statutory definition of Chief Fire Officer/Chief Executive. There was also no statutory requirement to designate the most senior regular firefighter as Chief Fire Officer; the choice of job title was a matter for local discretion. To help him reach these views he had consulted the Pensions Team at Worcestershire County Council.

**57** In the light of this analysis he concluded that for the purposes of the statutory framework regulating the employment and retirement of regular firefighters that the outgoing CFO was employed in the role of brigade management as a brigade manager. As a result Rule B1 of the Firefighters' Pension Scheme 1992 Order – February 2008 applied. The effect of this would be that the outgoing CFO had an unqualified right to retire before age 55. This in turn would lead to an exemption from tax liability because he would possess an actual or prospective right to pension benefits in accordance with the requirements of tax law. These conclusions were

communicated directly to the DMO but not the Clerk. These views were expressed in the role as Treasurer and not as legal advice.

### **Deputy Monitoring Officer's advice**

**58** The Deputy Monitoring Officer had received a phone call from the outgoing CFO requesting to speak to him on a confidential matter. The outgoing CFO would not give details over the phone and proposed a meeting. Prior to this the outgoing CFO E-mailed the DMO on 17 August 2009 (18.13pm) with the letter that was to be discussed with the Chair of the Authority on 19 August in respect of his wish to retire in May 2010.

**59** The DMO met with the outgoing CFO on 20 August where the outgoing CFO advised he had met with the Chairman and wanted to confirm his understanding of the regulations agreed with those of the Authority as his employer.

**60** On 26 August the DMO contacted the Treasurer, confirmed by way of E-mail and copied to the Clerk. His view was that having been through the regulations this seemed more of a Treasurer's matter per se given that the pension scheme administration was provided through Worcestershire County Council. The Clerk acknowledged this approach by thanking the DMO for keeping her in the loop.

**61** The DMO has also confirmed that as an employment lawyer he was suitably trained to review the pension regulations himself and did not seek specialist advice. He had satisfied himself that the outgoing CFO's interpretation in his letter to the Chairman was not inconsistent with the law. Once the Treasurer had reached a similar conclusion he had drafted the 14 September letter for the Chairman. This had been agreed with the Treasurer but had not been reviewed by the Clerk. The DMO authorised the release of the letter to the Chairman. The Chairman had not asked any specific questions on its content.

### **The Clerk's role**

**62** As noted above the Clerk had been informed that the Treasurer was reviewing the outgoing CFO's letter. However, the Clerk was not formally consulted on the final conclusion or the letter drafted by the DMO on behalf of the Chairman. The Clerk's view is that the outgoing CFO's letter to the Chairman was clearly informed by legal advice. Whilst in her view the DMO had recognised that the FPS law was open to interpretation he had been strongly led by the Treasurer's interpretations of the statutory position and had concluded that the views taken by the Treasurer and the outgoing CFO were not unreasonable in law. However she thought the DMO had not recognised the issue was potentially more legally complex than it might appear, was politically sensitive and problematic and that additional support would be needed. She has stated that this would have been provided had the matter been specifically raised with her.

## **View of counsel**

**63** The Authority and subsequently the constituent councils took independent expert employment and (in the case of the Authority) tax counsel from various QCs. The tax advice was that if the retirement arrangements did give rise to unauthorised payments then a tax liability would arise. Regarding the employment advice one QC was clear that in his view the advice given to the outgoing CFO was incorrect. This was essentially on the basis that the actual words used are less important than the clear parliamentary intention which was that the most senior officer in any Brigade should be treated differently to all other officers and in particular should be subject to a consent requirement for retirement in certain circumstances.

**64** A second QC reached conclusions broadly similar to the above in that it was concluded that whatever the post was called there continued to be a 'most senior officer' and it was that person whom the regulations intended to catch.

**65** One QC concluded that it was arguable that the outgoing CFO was not a CFO because at the time he was appointed the rank had been abolished. It was suggested that the reference to CFOs in the pension regulations applied only to existing CFOs who were in office and under notice when the regulations were made. His argument in effect was that the regulations were not intended to bite on 'the most senior manager' but only on managers who were or had been CFOs. It was acknowledged however that this interpretation lacked some degree of logic and that it might be difficult to persuade a Court to accept it.

## **District Auditor's assessment**

**66** The initial legal advice provided by Herefordshire Council through the DMO and the conclusions reached by Worcestershire County Council in respect of the financial interpretation through the Treasurer expressed the view that the outgoing CFO had an unconditional right to retire. It concluded that the role of CFO no longer existed and the consent rule did not bite on the replacement rank of Brigade Manager. Whatever he called himself the conclusion was that the outgoing CFO was a Brigade Manager, albeit the most senior Brigade Manager, but consent was not required for Brigade Managers and so he did not require consent. This view was communicated to the Authority in August 2009.

**67** It appears to have been noted by the officers that the rules were complex and opaque but there was no particular reason for the Chairman to think that the advice he received was wrong or that the situation was so complex that more expert legal advice was needed. The Authority's statutory officers did not suggest that they lacked confidence in the decision they had reached or that the Authority should take more advice.

**68** As I have noted earlier advice was sought by the Chairman from the statutory officers. I am satisfied that whilst the Treasurer gave his response in two days his analysis provided as part of my review does demonstrate a careful consideration of the Rules and their apparent inconsistencies. Whilst the Deputy Monitoring Officer has stated that he satisfied himself in respect of the regulatory framework my view is that he did place significant weight in the Treasurer's conclusions when drafting the Authority's response to the outgoing CFO.

**69** The advice received by the Chairman was that the outgoing CFO could retire without consent. In those circumstances there were no actions the Authority could take to prevent him doing so if he so wished and there were no implications for it beyond having to recruit a new chief fire officer. The initial legal advice did not highlight any particular problem with the statutory framework or suggest that this was a complicated area of law on which the legal officers might have some doubt. No suggestion was made by the Treasurer and DMO that further expert advice might be helpful.

**70** In my view, public bodies cannot necessarily take expert advice every time a very senior officer retires or resigns. On the other hand when QCs advice was taken there was, as we have seen, some degree of variation between them all demonstrating the complexity of the statutory position.

**71** It is unlikely the Authority will have to deal with a matter of this nature or magnitude very frequently. Whilst I must take care in applying hindsight, in my view the Treasurer and Deputy Monitoring Officer (DMO) should have better recognised the full potential complexity of the issue in August 2009. By concluding that there was no requirement to seek specialist legal views, to discuss the matter with employment experts including the tax office (HMRC) or seek the specific views of the Clerk at that time it put in train the series of events that led to the Authority needing to settle the matter.

**72** The conclusions were not subject to rigorous challenge because of weaknesses that have now come to light in the way the Authority's governance arrangements operated at this level in the organisation at the time the decision was taken.

- The fact that the Clerk was not formally consulted on the final conclusion or letter from the Chairman to the outgoing CFO is indicative, in my view, that the professional relationships between the outgoing Chief Fire Officer, Treasurer and Clerk were, in practice, distant.
- As a result there was an over reliance upon the Treasurer's interpretation of the FPS rules.
- In my view if the arrangements for communication between the Treasurer and the Clerk on significant issues had been stronger, and the Clerk therefore more directly engaged in the decision making, there is a probability that there would have been a greater recognition of the risks and external legal advice might have been sought at the time.

**73** I have also considered whether the actions of the Authority might also have led to an unlawful item of account. Believing they had no power to consent or not to his retirement request the Authority let the outgoing CFO submit his notice of retirement. Subsequently the Authority realised that the view might have been wrong and that its actions might have given rise to a large tax liability. On realising that the initial view was incorrect the Authority acted swiftly so no payments of pension were made to the outgoing CFO until the matter was settled in November 2010.

**74** The Authority took expert employment and tax counsel's opinion which confirmed there was a significant issue that it had to resolve. The decision that was eventually taken by the Authority was to allow the outgoing CFO to retire with their consent. This decision is one they are able to make (that is to say it was lawful). However, had they been fully informed at the outset that the CFO could not retire unless they consented and that giving consent would give rise to the tax charge then it is likely neither the Authority, nor the outgoing CFO, would have made that decision. On this basis I have concluded it is not clearly an item which gives rise to an unlawful item of account which I would wish a court to determine.

# Were opportunities missed to review the position?

## Appointment of interim Deputy Monitoring Officer (DMO)

**75** The original Deputy Monitoring Officer went on extended sick leave from the 21 September 2009 to 7 February 2010. An interim replacement (herself only appointed to be the interim Head of Law & Governance at Herefordshire Council in October 2009) was put in place as DMO in November 2009. I do not consider the time taken to appoint an interim to be unreasonable in the circumstances.

**76** At the beginning of November 2009 the interim DMO was asked to attend a meeting with the CFO and Treasurer and Group Leaders in place of the Clerk. No agenda was provided before the meeting. As a result of a brief conversation with Clerk prior to the meeting she believed the matter for discussion was the proposed retirement of the outgoing CFO. However, when she arrived at the meeting she was informed that the purpose of the meeting was to look at the process for his successor.

**77** At the end of the meeting, after the Group Leaders had left, the Interim DMO apologised for her lack of understanding of the nature of the meeting. The outgoing CFO explained that he had yet to receive an acknowledgement to his letter notifying the Authority of his intention to retire and that he wished to make sure the paperwork in place. He asked if she could arrange with the Chairman of the Authority for an acknowledgement letter to be sent.

**78** The interim DMO asked the outgoing CFO if the matter had been considered by the statutory officers. She asked this as she had experience of senior officers leaving post and was of the view that she would need to review the situation. At this stage she was not aware of the DMO's earlier involvement. The Interim DMO has stated that it had been confirmed to her by the outgoing CFO that both the Treasurer of the Authority and the Legal Services Manager from Herefordshire Council (former DMO) had considered the issue of his retirement and advised him that an unqualified right to retire existed. The outgoing CFO gave her a copy of the August letter from the Chairman. The Treasurer, who was also present, reaffirmed his view that the outgoing CFO has an absolute right to retire.

**79** She had specifically asked the outgoing CFO whether the permission of the Authority was required for him to retire. He had provided her with a copy of the 14 September 2009 letter from the Chairman of the Authority saying that he had unqualified right to retire. In her view there was nothing in the letter to arouse her suspicions and the Chair of the Authority had confirmed that the DMO had written the letter for him. As a result she prepared a letter

acknowledging receipt which the Chairman signed on 5 November 2009 and was sent. In my view whilst the actions of the interim DMO were not unreasonable arrangements could have been stronger if appropriate handover arrangements including briefing notes on key issues had been in place.

## CLG Guidance 9 November 2009

**80** Shortly after the Authority had formerly accepted the outgoing CFO's notice to retire FPS Guidance Note 2/2009 *Firefighters' Pension Scheme: Protected Pension Age* was published by CLG on 9 November 2009. An extract from this states:

### Extract from FPS Guidance Note 2/2009

We are being asked whether this protected right extends to Chief Fire Officers. The issue is that the Finance Act gives protection against the increase in minimum pension age to those who, under the Rules of their pension scheme, had a prospective right to a pension from age 50 before April 2006. HMRC guidance says that protection is given only to those who had an unqualified right before April 2006. The question therefore is whether Rule B1(2), which states that a CFO requires the permission of the Fire and Rescue Authority to give notice of retirement, qualifies a CFO's right and whether, therefore, CFOs who were appointed on or before 5th April 2006 are caught by the change and are not protected. HMRC are taking the view that CFOs appointed before April 2006 are caught and would have to pay an unauthorised payment charge if they retire before age 55.

This is a matter of interpretation of HMRC legislation and individuals who believe that they may be affected should seek advice from HMRC.

*Source: CLG*

**81** From my investigations it is clear that on reading this guidance the Director of Finance & Deputy Treasurer (DoF) had concerns. A request was made to the Deputy Pensions Officer at WCC who calculated that, based on information available at that time, if the CFO was allowed to retire at age 50 then the Authority faced an unauthorised payment charge in the region of £275,000.

**82** In an e-mail to the Treasurer on 23 November 2009 the DoF wrote:

*"Just to confirm my understanding of our discussion this morning. I do not need to notify the CFO of a potential tax liability, (or make financial provision for a charge to the FRA) as the CFO contract of employment (as issued) makes no reference to the FRA having to approve a retirement. I.e. that the CFO has an unqualified right to retire at 50?"*

**83** To which the Treasurer responded on 24 November 2009:

*"Based on Paul's contract of employment he appears to have an unfettered discretion to give notice to the Authority of his intention to terminate his contract of employment after the expiry of the required period of time. In these circumstances I do not foresee a personal potential tax liability for Paul on his retirement or the need for the Authority to make provision for one. To ensure a complete understanding of our assessment of the position I have taken the liberty of copying this to Paul on a confidential and without prejudice basis."*

**84** The outgoing CFO also replied to this e-mail reiterating his view that in his particular circumstances the issues turned around his employment status and statutory position within the Authority, not a determination in respect of the tax guidance itself. It also reiterated that he had formally contacted the Chair and that the investigations in response to this had confirmed his belief that he had an 'unqualified' right to retire. It was his understanding that the changes did not apply to him as he was appointed in 2005 after government had already disestablished the statutory rank of Chief Fire Officer replacing it with the Rank of Brigade Manager.

**85** Neither the Clerk nor the interim DMO were copied into these e-mails. The Clerk has confirmed that guidance note 2/2009 was not known to herself or the interim DMO at the time it was issued. The Clerk is now aware that there was e-mail correspondence on it between the Treasurer and the outgoing CFO. The Clerk can find no evidence of the Treasurer having raised a query on this guidance note with her. Her view is that it is very unusual for one statutory officer to make a decision without reference to the other and that this was an opportunity that was missed to review the issue.

### **District Auditor's assessment**

**86** In my view, whilst the Treasurer's views are consistent with those made in August 2009, it is clear that concerns in respect of the original decision had been raised by other members of the finance team. It cannot be said with certainty that revisiting the conclusions in detail at that time might have enabled the Authority to reconsider or reverse its position. However it is clear from its subsequent actions, once it was recognised that a potential problem existed, that the issues and potential resolutions would have been identified earlier and, in my view, this was an opportunity that was missed.

**87** I accept that the Treasurer reviewed the guidance and remained confident that in his professional view he did not believe it impacted upon his original conclusions as it was consistent with the questions he had already addressed. However, in my view the fact that:

- the opportunity to seek an independent view was not considered;
- the Clerk was not contacted; and
- that other officers did not take their concerns further,

is potentially indicative that a culture of full openness and recognition of the value of challenge was not in place. This was potentially compounded by the one step removal of both the Treasurer and the Clerk from the Authority.

**88** The Authority receives this type of guidance and circulars in relation to pension matters electronically from the Department for Communities and Local Government (CLG). There was no structured arrangement in place for the distribution of these, particularly to the Clerk. The arrangements for circulating electronic instructions and guidance on the Firefighters' pension scheme can therefore be improved.

## Was it appropriate for the FRA to settle the claim?

**89** It was common ground that consent could be given but tax penalties would arise. The Authority took further expert legal advice on those penalties. The three QCs also examined the question of how the situation had arisen and where liability might lie. Again their views varied.

**90** One QC concluded that the outgoing CFO had asked the Authority for advice about in what circumstances and when he could retire and having received advice, which was wrong, he relied upon it and retired to his detriment. In Counsel's view the outgoing CFO would have acted differently if the advice had been correct and would not have incurred the penalties. The Authority was responsible for the wrong advice and so liability lay with it.

**91** The other 2 QCs both concluded that the Authority had not been asked for or provided any advice to the outgoing CFO so he could not have relied upon it to his detriment or at all. Their view was that in his 17 August 2009 letter the outgoing CFO wrote to the Authority setting out at some length why he believed he was able to retire without consent and inviting the Authority to take advice and form a view. In Counsel's view the text of the letter was probably provided by a third party. It asked for "confirmation that my understanding ... is correct". It seemed that the outgoing CFO was not asking for advice, not least because he had had his own advice. Instead he was asking whether the Authority agreed with his advice and was minded to take a similar position. I note, however, that he did state in his letter, "Determination of my employment and pension position is a statutory responsibility of the Fire Authority."

**92** The view of the Authority was significant because if it decided consent was necessary he would have to delay his retirement or risk an expensive and protracted dispute with the Authority. The Authority (via the Chairman's letter) wrote back stating "the view of this authority is that you have an unqualified right to retire...I do trust that this letter will enable you to fully consider your position". This letter did not talk about or purport to offer advice upon which the outgoing CFO could or should rely. It merely concurred with his view. In Counsel's view this correspondence was not really capable of giving rise to an assumption of responsibility on the part of the Authority.

**93** Put simply this legal opinion was that outgoing CFO had not “relied” on the advice of the Authority and if he had not relied on that advice there could be no liability for the Authority. Furthermore since the letter merely describes itself as expressing the view of the Authority it was not a misrepresentation. The Authority at that time genuinely held that view. The letter does not say it was a correct or definitive view merely that it was the view of the Authority.

**94** Two of the QCs also considered whether a duty of care had arisen and been breached. If so liability would arise for loss. They agreed that a duty might arise (although it was arguable). One thought that if there was a duty “it was not a duty to give correct advice” but merely to give advice with reasonable skill and care and/or to the standard of a reasonably competent person of the relevant profession. In their view there was no suggestion that the advice given did not comply with these requirements albeit that it may ultimately have been wrong. In their view it was a view given honestly after analysis of complex rules and it was clearly caveated in that it expressed “the view of this authority” i.e. it did not hold itself out to be definitive.

**95** The second QC was less sure that the advice was given to a reasonable standard. Further, in their view, if the council representatives had conducted themselves appropriately and come to a view that the Regulations were opaque then they should have warned the Authority to that effect. The QC concluded that had they done so the Authority might have been minded to take more expert advice or to more strongly caveat their view.

### **District Auditor's assessment**

**96** I have considered both whether it was reasonable for the Authority to settle the matter without reference to the courts and whether it has acted lawfully. There are four QCs opinions which have been taken on the aspects of this case. There is some degree of agreement between them but there are also material differences of opinion in the:

- interpretation of the pension scheme Regulations;
- whether there was a duty of care; and
- whether advice was being sought by the outgoing CFO and was being given by the Authority.

**97** This demonstrates the degree of complexity in this case but, more materially in my view, it also supports the Authority's view that it was reasonable to seek to settle the case. With five possible parties (the outgoing CFO, the Authority, the two constituent Councils and the tax authority) and a wide range of complex matters to argue about the costs of litigation were likely to be high with no real security about the outcome. There was a risk that if the matter went to court and the Authority lost that it would have had to:

- make full recompense to the outgoing CFO and meet his legal costs;
- and

- possibly meet some or all of the cost of the constituent Councils and the HMRC.

**98** In May 2010 the Authority received a paper in closed session to consider its options following its own analysis. It determined to proceed with Option 2 which was based on the advice by Counsel and essentially allowed the outgoing CFO permission to retire, which would be given by the Authority. The basis of the outgoing CFO's co-operation in withdrawing his notice and asking for permission to retire would be balancing his potential litigation risk with the Authority with equitable compensation for some of the possible losses he accrued because of this action.

**99** Those losses would be expected to take the form of the unauthorised payment charge (tax penalty) imposed upon the outgoing CFO by the Inland Revenue and other incidental costs likely to arise including legal costs. Counsel advised the Authority that it had the appropriate legal powers to enter into this agreement under section 111 of the Local Government Act 1972. In addition, the Authority would have a scheme sanction charge imposed upon it as a consequence of allowing the outgoing CFO to retire before the age of 55.

**100** In May 2010, on the basis of the evidence I had seen at that time, I concluded, and informed the Authority, that I was not minded to exercise any of my formal audit powers. I advised the Authority that this conclusion should not be taken as suggesting that the proposed transaction or course of action will be exempt from challenge in future, whether by myself or others entitled to raise an objection to it. Through this report I have now revisited that conclusion and additionally noted that if the matter were not resolved there would potentially be reputational loss and damage to the Authority which may impact upon the morale of the service and its firefighters. Understanding the basis upon which the Authority has satisfied itself that it has taken the appropriate course of action I do not propose exercising any of my formal audit powers beyond highlighting the issues and learning in this report.

## Was the value of the settlement reasonable?

**101** As I have noted earlier the legal advice received demonstrates the degree of complexity in this case and supports the Authority's view that it was reasonable to seek to settle the case. It was common ground from all of the QCs that the Authority could give the outgoing CFO consent to retire but that penalties would arise. The Authority took further expert legal advice on those penalties. Its negotiations were therefore looking to minimise those penalties and hence the cost to the Authority and taxpayers.

**102** In terms of the settlement the Authority has managed this down from an original claim of £1.2 million against it to £100,000. The outgoing CFO as part of the settlement agreed to minimise costs for both the Authority and himself and in doing so, did not exercise all of his pension rights.

**103** However, there have also been additional legal and audit costs as well as the opportunity costs of officers having to deal with the issue as well as their day-to-day work. Whilst some of these will be borne by the constituent authorities the costs that will fall initially on the Authority at this time have been estimated at just over £319,500 (table 2).

Table 2: **Estimated settlement and case costs**

<b>Cost</b>	<b>Total £</b>
Officer and audit costs	<b>41,000</b>
Tax Penalties	<b>55,000</b>
Outgoing CFO Settlement and Employment	<b>175,600</b>
External Counsel advice	<b>47,900</b>
<b>Totals</b>	<b>319,500</b>

*Source: H&W FRA Working Paper*

**104** The Authority has been in negotiations over the recovery of these costs from the constituent Councils. A settlement was reached in September 2011 whereby both constituent councils will each meet £122,500 and the Authority meets the £74,500 balance of the costs. Whilst the loss to the Authority has been significantly reduced, and thereby there is no anticipated impact upon the resources available to protect people and property in Herefordshire and Worcestershire, there is a significant loss of resources from the Herefordshire & Worcestershire public sector. Because of insurance arrangements at Herefordshire County Council the total loss of monies to the local public sector will be reduced to £247,000.

## **District Auditor's assessment**

**105** My overall conclusion is therefore that once it became aware that it might have significant liabilities the Authority has managed the negotiations of the settlement well. However, the Authority should review the provisions within the Authority's service level agreements with its constituent bodies on a regular basis and ensure they cover the handling of disputes where the terms of the agreements have not been met and/or the performance of staff is below that expected to ensure appropriate safeguards are in place to protect the Authority's position.

# Appendix 1 Detailed background to the regulatory framework

## Pensions statutory framework

**106** Regular firefighters employed before 6 April 2006 were eligible for membership of the Firefighters' Pension Scheme (FPS). The FPS is a statutory, public service pension scheme initially made under section 26 of the Fire Services Act 1947.

**107** This Act was repealed by the Fire and Rescue Services Act 2004, but section 36 of the 2004 Act allowed the FPS to continue in force. It became a closed scheme on 6 April 2006 when the New Firefighters' Pension Scheme (NFPS) was introduced. The outgoing CFO was a member of the FPS and any observations, judgements and conclusions that follow relate to that scheme only.

**108** Responsibility for policy on the pension schemes rests with the Department for Communities and Local Government. The administration and payment of individual pensions and benefits is the responsibility of fire and rescue authorities. As with all occupational pension schemes the operation of the FPS is based upon a set of rules. For the FPS these were originally laid down in the Firemen's Pension Scheme Order 1992 (SI 1992/129 as amended) which came into effect on 1 March 1992. The rules of the FPS (in common with most pension schemes) have been amended on many occasions since that date.

## Tax framework

**109** Like all other pension schemes, the FPS must comply with Pension Acts although, as a public service scheme, it is exempt from certain requirements. The FPS is a registered pension scheme for the purposes of the Finance Act 2004. This means that HM Revenue and Customs (HMRC) allow certain tax concessions. Contributions attract tax-relief and some benefits, provided they are within required limits, and are exempt from tax charges.

**110** However, failure to comply with the FPS rules or Pension or Finance Acts could lead to HMRC determining that an unauthorised payment had been made. The payment of an unauthorised payment will generate up to three tax charges.

- The **unauthorised payments charge** – An income tax charge at a rate of 40 per cent, based on the value of the unauthorised payment.
- The **unauthorised payments surcharge** – Where unauthorised payments go above a set amount in a set period an additional income tax charge at a rate of 15 per cent will be due, based on the value of the unauthorised payment.

- The **scheme sanction charge** – An income tax charge on the scheme administrator in respect of certain unauthorised payments in addition to the other two tax charges. The tax is due at a rate of 40 per cent, based on the value of the payment. However, the rate may be reduced to as low as 15 per cent where the unauthorised payments charge has been paid.

**111** Her Majesty's Revenue and Customs (HMRC) has posted guidance on its website in respect of the normal minimum pension age being increased from 50 to 55 from 6 April 2010. After that date pension payments from a registered pension scheme can only be started without penalty when the member is aged 55 or older.

**112** The exceptions are where they receive early retirement on grounds of ill health or they are allowed to start their pensions from a lower protected pension age under the pension tax rules. Where members of occupational pension schemes had an 'unqualified' right as at 6 April 2006 to take pension benefits under their pension scheme's rules from an age lower than the scheme's normal retirement age the tax rules protect this right to take benefits at a lower pension age in certain circumstances. Where this 'protected pension age' applied scheme members could start receiving their pension before age 55 on or after 6 April 2010 with retention of the scheme tax concessions.

**113** However, to qualify for a protected pension age, the right to a pension before age 55 must be 'unqualified' (in that no other party needs to consent to a request to take benefits before it becomes binding upon the scheme or contract holder). And the provision allowing a member to take benefits before age 55 must have been set out in the rules of the pension scheme on 10 December 2003 (this is the date of the consultation document that first introduced the concept of a protected pension age).

**114** The Government announced the change in 2003 and delivered the relevant tax rules through legislation in the following year. The change came into effect from 6 April 2010. This deliberate time lag was to allow time for employers and pension scheme administrators to decide and plan how best to implement the change to suit the needs of their own pension scheme members. The fundamental issue upon which this report is focussed is how Hereford & Worcester FRA reached its conclusions on the interpretation of one of these rules, namely Rule B1 on Ordinary Pensions, as providing the outgoing CFO with an 'unqualified right as at 6 April 2006 to take pension benefits under the scheme's rules.

## Appendix 2 HMRC definitions

### Unauthorised payments

**115** HMRC consider an unauthorised payment to be in respect of a person who is or has been a member or sponsoring employer is a payment that is neither:

- an authorised employer payment; nor
- an authorised member payment.

**116** Authorised employer payments are payments made to sponsoring employers or former sponsoring employers as follows.

- Public service scheme payments.
- Authorised surplus payments.
- Compensation payments.
- Authorised employer loans.
- Scheme administration employer payments.
- Any other payment prescribed by Regulations.

**117** An **unauthorised employer payment** is:

- a payment by a registered pension scheme that is an occupational pension scheme to or in respect of a sponsoring employer or a former sponsoring employer which is not an authorised employer payment; or
- anything which is treated as being an unauthorised payment to a sponsoring employer or former sponsoring employer under Part 4 of Finance Act 2004.

**118** Authorised member payments are made to a current or former member of a registered pension scheme and are:

- pensions that comply with the pension rules in section 165 Finance Act (FA) 2004 or the pension death benefit rules in section 167 FA 2004 (current members only);
- lump sum payments that comply with the lump sum rule in section 166 FA 2004 or lump sum death benefit rule in section 168 FA 2004 (current members only);
- recognised transfers that comply with section 169 FA 2004 (current members only);
- scheme administration member payments;
- payments in accordance with a pension sharing order or provision, and
- any other payment prescribed by Regulations;
- a payment by a registered pension scheme to or in respect of a member or a former member of that pension scheme that is not an authorised member payment; or
- anything which is treated as being an unauthorised payment to or in respect of a member or former member under Part 4 of Finance Act 2004.

## Appendix 3 Action plan Incorporating Responses from the Chief Fire Officer and the Chairman of the Fire and Rescue Authority

### Recommendations

#### Recommendation 1

The Authority should improve processes and arrangements in its governance arrangements (not operational) that could help safeguard the Authority against recurrence of a similar situation by:

- having a Monitoring Officer (Clerk) and Treasurer who are not remote to the operations of the Authority;
- ensuring there is a culture of open professional challenge and critical friends are available where officers are making key decisions; and
- reviewing its policies and training arrangements to ensure they are supportive to this open culture and that appropriately address the perceptions and understanding of officers in situations where they believe the law or authority procedures are not being followed or where they believe officers may not have considered all options in forming a view.

<b>Responsibility</b>	Chief Fire Officer
<b>Priority</b>	High
<b>Date</b>	April 2012
<b>Comments</b>	<p>This recommendation is agreed.</p> <p>It is not possible for a similar occurrence to happen again due to the specific nature of the occurrence being investigated in this report relating to only one period in time when there was a change of pension regulations. However when considering the matter as a general governance issue we make the following comments.</p> <p>Significant changes have already been made in furtherance of this recommendation since the change in leadership of the Service in April 2010. A new Treasurer and Clerk (neither of whom were involved when the original advice was given) have been appointed on an interim basis pending receipt of this report. These statutory officers have both previously worked for the Authority and bring continuity and experience to these roles. They both attend the Service's Senior Management Board and all Authority committee meetings. Additional time has been sanctioned for both roles to ensure that they are able to fulfil their responsibilities effectively.</p> <p>It is the intention of the Authority to review the arrangements for the roles of Clerk/Monitoring Officer and the Treasurer taking into account this report and the comments and opinions of the Auditor and make permanent appointments to the respective roles within the next six months.</p>

## Recommendation 1 - comments continued

Since taking up his role in April 2010 the new Chief Fire Officer has widened the membership of the Service's most senior management meeting, ensuring that it meets on a regular basis and creates a culture of open constructive challenge.

A leadership development programme has also been put in place for senior officers to improve team working and transparency of working. This has significantly improved the culture of constructive and open challenge within the team. A further phase of that programme is to be extended to all officers with management responsibility.

It is recognised that the matter which is the subject of this report came to light as a result of officers within the Service using a whistle blowing process and reporting the matter to both Members and the (then) Interim Deputy Monitoring Officer (now Clerk) and to that extent it is recognised that the whistle blowing process within the organisation does work.

In addition the current Clerk undertook a review of the Authority's whistle blowing procedures in 2010 with the then Audit Committee Chairman. It is however, the intention of the Authority to test the current culture of the organisation through questionnaires and other means to determine the impact of the measures described above and to further develop, if necessary, both the policies of the Authority and again if necessary, provide a more bespoke training programme to ensure all officers and Members feel confident of their ability to raise issues of concern.

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## Recommendation 2

The Authority should strengthen arrangements for ensuring the requirements of the Fire-fighters' Pension scheme (FPS) are met by putting in place arrangements for the distribution of published guidance and circulars to appropriate officers.

<b>Responsibility</b>	Chief Fire Office
<b>Priority</b>	High
<b>Date</b>	May 2010
<b>Comments</b>	<p>This recommendation is agreed.</p> <p>This recommendation was fully implemented in 2010 and covered not only guidance and circulars relating to the Firefighters' Pension Scheme but all incoming circulars and guidance on all topics from DCLG and CFOA. Internal audit, as part of their 2010/11 governance review, also discussed the implementation of this measure with the Clerk and was satisfied that it was working well.</p> <p>The internal auditors report to the Audit Committee regarding the Authority's governance review, was received at the Committee's last meeting and highlighted no further governance concerns with this or any other area and the Internal Auditor confirmed that he was satisfied with the Authority's overall governance arrangements.</p>

## Recommendation 3

The Authority should review the provisions within the Authority's service level agreements with its constituent bodies on a regular basis. This review to include the provisions for arrangements for the handling of disputes where the terms of the agreements have not been met and/or the performance of staff is below that expected to ensure appropriate safeguards are in place to protect the Authority's position.

<b>Responsibility</b>	Clerk
<b>Priority</b>	High
<b>Date</b>	April 2012
<b>Comments</b>	<p>This recommendation is agreed.</p> <p>The agreement for both legal provision and internal audit services is currently being renewed and negotiations are underway to ensure suitable safe guards are in place before contracts are formally entered into. It is likely that those negotiations will be complete within the next four weeks. Other service level agreements will be re-negotiated as they come up for renewal in the coming months and a disputes procedure will be considered.</p>

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Audit Commission

1st Floor  
Millbank Tower  
Millbank  
London  
SW1P 4HQ

Telephone: 0844 798 3131

Fax: 0844 798 2945

Textphone (minicom): 0844 798 2946

[www.audit-commission.gov.uk](http://www.audit-commission.gov.uk)

October 2011

## **6. Supplementary Annual Governance Report 2009/10**

### **Purpose of report**

1. To provide the Committee with a copy of the External Audit Letter which supplements the Annual Governance Report 2009/10.
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### **Recommendations**

#### ***The Clerk recommends that the Committee:***

- i) notes the External Audit Supplementary Annual Governance Report 2009/10; and***
- ii) approves the letter of representation on behalf of the Authority.***

### **Introduction and Background**

2. In the External Auditor's Annual Governance Report presented to the Audit Committee on 30 June 2010, it was explained that the District Auditor could not issue the audit certificate until he had considered matters brought to his attention during the course of the audit in relation to the early retirement of the outgoing Chief Fire Officer and their potential impact upon the value for money conclusion. The letter attached at Appendix 1 sets out these matters and concludes the 2009/10 audit.

### **Summary**

3. The attached letter states that the District Auditor remains satisfied that there is no material impact upon his original opinion on the financial statements, and that an unqualified audit opinion remains appropriate.
4. Following the settlement of issues in relation to the retirement of the Outgoing Chief Fire Officer, the District Auditor undertook a further assessment with greater focus on outcomes and value for money achievements. The District Auditor has detailed the findings in his investigation report that is to be considered elsewhere on the agenda.
5. Prior to the District Auditor issuing the certificate of closure on 2009/10 audit, auditing standards require him to ask the Committee and management for written representations about the Authority's financial statements and governance arrangements. This was originally provided to the District Auditor on 30 September 2010. However, given the time that has elapsed the District Auditor is required to ask the Committee for an updated version. Appendix 2 of the attached report contains the draft letter of representation.

## Financial Considerations

Consideration	Yes/No	Reference in Report i.e. paragraph no.
There are financial issues that require consideration	Y	Appendix 1

## Legal Considerations

Consideration	Yes/No	Reference in Report i.e. paragraph no.
There are legal issues e.g. contractual and procurement, reputational issues that require consideration	Y	Appendix 1

## Additional Considerations

The table below sets out any additional issues arising from the proposals contained in this report and identifies the relevant paragraphs in the report where such issues are addressed.

Consideration	Yes/No	Reference in Report i.e. paragraph no.
<b>Resources</b> (e.g. Assets, ICT, Human Resources, Training & Development, Sustainability).	N	
<b>Strategic Policy Links</b> (e.g. IRMP, Authority Plan, Equality & Diversity, Partnerships, Environmental Impact).	N	
<b>Risk Management / Health &amp; Safety</b> (e.g. risk management and control measures, risk register score).	Y	Appendix 1
<b>Consultation with Representative Bodies</b>	N	

## Supporting Information

Appendix 1 – Supplementary Annual Governance Report 2009/10

## Contact Officer

Anne Brown, Clerk to the Authority  
 (01905 368331)  
 Email: [abrown@hwfire.org.uk](mailto:abrown@hwfire.org.uk)

28<sup>th</sup> October 2011

Audit Committee  
Hereford & Worcester Fire and Rescue Authority

Dear Sir/Madam

## **Supplementary Annual Governance Report 2009/10**

This letter supplements my annual governance report presented to the Audit Committee on 30<sup>th</sup> June 2010 and my independent auditor's report issued on the 30<sup>th</sup> September 2010 in respect of the 2009/10 audit.

In order to fulfil the requirements of the Audit Commission Act 1998, auditors have to issue an audit certificate. The certificate marks the conclusion of the audit and the completion of the auditors other statutory responsibilities and duties, e.g. dealing with outstanding objections from electors.

In my annual governance report presented on 30<sup>th</sup> June 2010 I explained that I could not issue the audit certificate until I had considered matters brought to my attention during the course of my audit in relation to the early retirement of the outgoing Chief Fire Officer and their potential impact upon my value for money conclusion. This letter sets out these matters and concludes the 2009/10 audit.

### **Audit opinion**

In my independent auditor's report dated the 30<sup>th</sup> September 2010 I issued an unqualified audit opinion. I am required to revisit my audit opinion prior to issuing my audit certificate. Since the issue of my opinion the Authority has reached a settlement with the former Chief Fire Officer and its constituent authorities. The total net cost to the local public sector will be £247k and the Authority will be required to meet £74.5k of this. With materiality on the audit being £600k I therefore remain satisfied that there is no material impact upon my opinion on the financial statements, and that an unqualified audit opinion remains appropriate. I can also confirm that no other significant matters have come to my attention that would impact upon, or alter, this judgement.

### **Context to my 2009/10 Value for money (VFM) conclusion**

In my annual governance report presented on 30<sup>th</sup> June 2010, and confirmed in my independent auditor's report issued on 30<sup>th</sup> September 2010, I reported that I was considering matters brought to my attention during the course of my audit in relation to the early retirement of the former Chief Fire Officer.

I have now completed this work and my conclusions are contained in *Retirement of the*

*Chief Fire Officer – report by the District Auditor* dated 28<sup>th</sup> October 2011 which will be presented to the Audit Committee on 7<sup>th</sup> November 2011.

In the paragraphs that follow I bring to the Audit Committee's attention those areas that directly impact upon my 2009/10 Value for Money Conclusion. It is, however, important to note that my report recognises that the Authority has been open and transparent about the issue of the retirement of its former CFO. Since his appointment in April 2010 the new Chief Fire Officer has taken responsibility for ensuring any learning from the issue is acted upon. Under his leadership the Authority has already made improvements to its governance arrangements. In September 2010 it appointed an 'in-house' Treasurer on a short-term contract. An interim Deputy Monitoring Officer has now been appointed as Clerk on a fixed term contract. Both of these roles are more closely integrated into the Authority. The Authority has also carried out a review of its committee arrangements in order to ensure they remain the most efficient and effective for its operational delivery.

As a result of these actions I am satisfied the Authority can demonstrate that it has appropriate arrangements in place for 2010/11, as reported in my Supplementary Annual Governance Report for that year. I am also of the view that the failings in 2009/10 did not relate to or impact upon the operation of the fire service and there was no increase in risk to the people of Herefordshire and Worcestershire.

### **2009/10 Value for money (VFM) conclusion**

In my annual governance report presented on 30<sup>th</sup> June 2010 I highlighted that I was minded to conclude that whilst your overall arrangements, including good governance, were adequate that there had been a potential, isolated, failure in at least one aspect of the Authority's internal control and risk management which had resulted in the inclusion of an exceptional item and contingent asset within the Authority's financial statements. I considered this important because a sound system of internal control should include compliance with relevant laws and regulations and that expenditure is lawful. Until I had completed my investigations I was unable to reach a conclusion on the Authority's arrangements for securing economy, efficiency and effectiveness in the use of resources or to certify completion of the audit. As I have stated above I have now completed this work and my conclusions are contained in *Retirement of the Chief Fire Officer – report by the District Auditor* dated 28<sup>th</sup> October 2011.

Following the completion of my investigation I have revisited the themes of *Good Governance* and *Risk Management & Internal Control* before finalising my conclusions. In accordance with professional practice my judgements have been subject to peer review and have been revisited in line with the Audit Commission's overarching requirements as laid out in the Code of Audit Practice (the Code) and its guidance to auditors to focus on corporate arrangements and, in particular, that:

- auditors should review and, where appropriate, examine evidence that is relevant to the audited body's corporate performance management and financial management arrangements and report on these arrangements; and,
- the Code states that auditors' assessments of risk should reflect consideration of the relevance and significance of the potential business risks faced by all bodies of a particular type, and other risks that apply specifically to individual audited

bodies. These are the audited body's significant operational and financial risks in achieving its statutory functions and objectives, which are relevant to auditors' responsibilities under the Code.

### **Good Governance**

The Audit Commission defines good governance as 'ensuring an organisation is doing the right things, in the right way, for the right people in a timely, inclusive, open, honest and accountable manner'. The focus of the key line of enquiry on this criterion is whether the Authority:

- has adopted, promotes and demonstrates, the principles of good governance;
- maintains focus on its purpose and vision;
- demonstrates a strong ethical framework and culture; and
- applies the principles and values of good governance to its partnership working.

From my report it is clear that the Authority had structural arrangements in place that met the expected governance model i.e. CFO (Head of Paid Service), Clerk (Monitoring Officer) and Treasurer (s.114 officer). In this particular instance the interpretation of a complex piece of legislation without fully recognising the potential risks should the interpretation be wrong has led to the situation arising.

However, the assessment I am required to undertake is more demanding with a greater focus on outcomes and value for money achievements. In my detailed report I have highlighted the following:

- weaknesses in governance arrangements operating in practice between statutory officers at the time the decision was taken (paragraph 15 and 72);
- a culture of openness and recognition of the value of challenge was not in place compounded by the one step removal of both the Treasurer and Clerk of the Authority (paragraph 16 and 87);
- no structured arrangements were in place for the distribution of circulars and guidance relating to pension matters from DCLG (paragraph 17 and 88); and,
- the Clerk was not formally consulted on the final conclusion or letter drafted by the Deputy Monitoring Officer for the Chairman to sign confirming no permission was necessary (paragraph 62).

Whilst recognising that there clearly were individual failings the weak operation of the governance arrangements in practice allowed the individual failings to impact in the way they did and that minimum standards have not been met in this year. The weaknesses identified are not significant to the criterion as a whole. When the original issue came to light the potential claim and costs against the Authority was £1.2m. This has now been reduced to £319.5k in total, with the Authority's personal liability being around £74.5k. With materiality on the audit being £600k the final position clearly does not significantly impact upon the Authority's overall arrangements, nor its operational and financial ability to achieve its statutory functions and objectives. This leads me to conclude that an except for, rather than adverse, conclusion is appropriate.

## **Risk Management & Internal Control**

The Authority's Annual Governance Statement is an open and honest self-assessment of its performance across all of its activities. It contains a clear statement of the actions taken, or required, to address areas of concern.

Legal advice to me is clear in that believing they had no power to consent or not the Authority let the CFO resign. In fact, if their advice had been correct they would have had no choice anyway. The Authority took expert employment and tax counsel's opinion and the balance of views was that the conclusion it had reached was probably wrong and that a situation had arisen which it had to put it right. It is important to note that the decision that was eventually taken by the Authority, which was to allow the former CFO to retire with their consent, was a decision that they were able to make (that is to say it was lawful). However, had they been fully informed at the outset that the CFO could not retire unless they consented and that giving consent would give rise to the tax charge then it is likely neither the Authority, nor the outgoing CFO, would have made that decision. So it is not apparently an item which gives rise to an unlawful item of account but one of interest to the public which my report addresses.

I have also noted that whilst the weak operation of the governance arrangements in practice allowed the individual failings to impact in the way they did there were other aspects of the governance and risk management arrangements that did operate well. The Freedom of Information Requests from the FBU in relation to the matter triggered the whistle blowing policy and once it became aware that it might have significant liabilities the Authority managed the negotiations of the settlement well.

The only area that remains of concern from my work is whether, in this one instance, the Authority cannot clearly demonstrate compliance with relevant laws and regulations. As stated above the decision it has finally made is a lawful one. However, it does result in liabilities that the Authority will need to meet. As stated above the total cost to resolve the matter will be in the region of £319.5k but the Authority's liability is £74.5k. These arise not directly from a non-compliance with laws and regulation but new tax guidelines. Given the sums involved and the wording of the criteria I am no longer of the view that this can be considered such a significant matter as to fail the whole criterion.

## **Overall Conclusion**

On the basis of the above, and having considered the Audit Commission guidance, I have concluded that the Authority cannot demonstrate, in 2009/10, that it has achieved the minimum requirements in respect of having put in place adequate arrangements to promote and demonstrate the principles and values of good governance. I therefore propose to issue an 'except for' conclusion in respect of the above criteria. (Appendix 1 contains my draft conclusion).

## **Audit certificate**

As outlined above, in order to fulfil the requirements of the Audit Commission Act 1998, auditors have to issue an audit certificate. The certificate marks the conclusion of the audit and the completion of the auditors other statutory responsibilities and duties, e.g. dealing with outstanding objections from electors.

I confirm that I have considered all of the significant matters that have come to my attention since 30<sup>th</sup> September 2010, and that I have carried out work in relation to my other statutory duties as appropriate. I therefore propose to issue my certificate of closure on the 2009/10 audit (Appendix 1 contains my draft certificate).

### **Letter of representation**

Before I issue my certificate, auditing standards require me to ask you and management for written representations about your financial statements and governance arrangements. This was originally provided to me on 27<sup>th</sup> September 2010. However, given the time that has elapsed I am required to ask you for an updated version. Appendix 2 contains the draft letter of representation.

### **Independence**

I confirm that I have complied with the Audit Practice Board's ethical standards for auditors, including ES 1 (revised) - Integrity, Objectivity and Independence. I can also confirm there were no relationships resulting in a threat to independence, objectivity and integrity.

Yours sincerely

**Grant Patterson**  
*District Auditor*

## **Draft independent auditor's report to Members of Hereford & Worcester Fire and Rescue Authority**

### **Issue of the audit opinion on the accounting statements**

In my audit report for the year ended 31 March 2010 issued on 30 September 2010 I reported that, in my opinion:

- the accounting statements and related notes gave a true and fair view, in accordance with applicable laws and regulations and the Code of Practice on Local Authority Accounting in the United Kingdom 2009: A Statement of Recommended Practice, of the financial position of the Authority as at 31 March 2010 and its income and expenditure for the year then ended; and
- the firefighters' pension fund accounting statements gave a true and fair view, in accordance with the Code of Practice on Local Authority Accounting in the United Kingdom 2009: A Statement of Recommended Practice of the financial transactions of the firefighters' pension fund during the year ended 31 March 2010 and the amount and disposition of the fund's assets and liabilities as at 31 March 2010, other than liabilities to pay pensions and other benefits after the end of the scheme year.

### **Conclusion on arrangements for securing economy, efficiency and effectiveness in the use of resources**

#### **Authority's Responsibilities**

The Authority is responsible for putting in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources, to ensure proper stewardship and governance and regularly to review the adequacy and effectiveness of these arrangements.

#### **Auditor's Responsibilities**

I am required by the Audit Commission Act 1998 to be satisfied that proper arrangements have been made by the Authority for securing economy, efficiency and effectiveness in its use of resources. The Code of Audit Practice issued by the Audit Commission requires me to report to you my conclusion in relation to proper arrangements, having regard to relevant criteria for fire and rescue authorities specified by the Audit Commission and published in May 2008 and updated in October 2009. I report if significant matters have come to my attention which prevent me from concluding that the Authority has made such proper arrangements. I am not required to consider, nor have I considered, whether all aspects of the Authority's arrangements for securing economy, efficiency and effectiveness in its use of resources are operating effectively.

## Qualified Conclusion

I have undertaken my audit in accordance with the Code of Audit Practice. In doing so I considered the circumstances of the retirement of the Authority's former Chief Fire Officer and, in my report *Retirement of the Chief Officer – report by the District Auditor* dated 28 October 2011, highlighted:

- weaknesses in the governance arrangements operating in practice between statutory officers at the time the, probably, incorrect conclusion was reached that the former Chief Fire Officer did not require the Authority's permission to retire;
- that a culture of openness and recognition of the value of challenge was not in place compounded by the one step removal of both the Treasurer and Clerk of the Authority;
- that no structured arrangements were in place for the distribution of circulars and guidance relating to pension matters from the Department for Communities and Local Government; and,
- that the Clerk was not formally consulted on the final conclusion or letter drafted by the Deputy Monitoring Officer for the Chairman to sign confirming no permission was necessary for the former Chief Fire Officer to retire.

Having regard to the criteria for fire and rescue authorities specified by the Audit Commission and published in May 2008 and updated in October 2009, and the supporting guidance, I am satisfied that, in all significant respects, Hereford & Worcester Fire and Rescue Authority made proper arrangements to secure economy, efficiency and effectiveness in its use of resources for the year ended 31 March 2010 except that it did not put in place adequate arrangements to promote and demonstrate the principles and values of good governance.

## Certificate

In my report dated 30 September 2010, I explained that the audit could not be formally concluded on that date until my consideration of matters brought to my attention during the course of my audit in relation to the early retirement of the outgoing Chief Fire Officer had been completed. These matters have now been dealt with. No other matters have come to my attention since that date that would have a material impact on the financial statements on which I gave an unqualified opinion.

I certify that I have completed the audit of the accounts of Hereford & Worcester Fire and Rescue Authority for the year ended 31 March 2010 in accordance with the requirements of the Audit Commission Act 1998 and the Code of Audit Practice issued by the Audit Commission.

**Grant Patterson**  
Officer of the Audit Commission

8 November 2011

## Appendix 2

### Draft letter of representation

To:

Grant Patterson,  
District Auditor,  
Audit Commission,  
1st & 2nd Floors, No.1 Friarsgate,  
1011 Stratford Road,  
Solihull B90 4BN

### **Hereford & Worcester Fire and Rescue Authority - Audit for the year ended 31 March 2010 - Updated Management Representations**

I confirm to the best of my knowledge and belief, having made appropriate enquiries of other directors, officers and officials of Hereford & Worcester Fire and Rescue Authority, that:

- the representations made in the Letter of Representation signed and dated 27<sup>th</sup> September 2010 remain valid; and,
- specifically, since the date of approval of the financial statements by the Authority no additional significant post balance sheet events have come to my attention which would require additional adjustment or disclosure in the financial statements.

### **Signed on behalf of Hereford & Worcester Fire and Rescue Authority**

I confirm that this letter has been discussed and agreed by the Audit Committee on 7<sup>th</sup> November 2011.

Signed

Name

Position

Date

## **7. Supplementary Annual Governance Report 2010/11**

### **Purpose of report**

1. To provide the Committee with a copy of the External Audit Letter which supplements the Annual Governance Report 2010/11.
- 

### **Recommendations**

#### ***The Clerk recommends that the Committee:***

- i) notes the External Audit Supplementary Annual Governance Report 2010/11; and*
- ii) approves the letter of representation on behalf of the Authority.*

### **Introduction and Background**

2. In the report dated 29 September 2011, the District Auditor explained that the audit could not be formally concluded on that date until the consideration of matters brought to his attention during the course of the audit for the year ended March 2010 in relation to the early retirement of the outgoing Chief Fire Officer had been completed. These matters have now been dealt with and no other matters have come to the attention of the District Auditor since that date that would have a material impact on the financial statements on which he gave an unqualified opinion and value for money conclusion.

### **Summary**

3. The letter attached at Appendix 1 certifies that the District Auditor has completed the audit of the accounts in accordance with the requirements of the Audit Commission Act 1998 and the Code of Audit Practice issued by the Audit Commission.
4. Prior to the District Auditor issuing the certificate of closure on 2010/11 audit, auditing standards require him to ask the Committee and management for written representations about the Authority's financial statements and governance arrangements. This was originally provided to the District Auditor on 28 September 2011. However, given the time that has elapsed the District Auditor is required to ask the Committee for an update. Appendix 2 of the attached report contains the draft letter of representation.

## Financial Considerations

Consideration	Yes/No	Reference in Report i.e. paragraph no.
There are financial issues that require consideration	No	

## Legal Considerations

Consideration	Yes/No	Reference in Report i.e. paragraph no.
There are legal issues e.g. contractual and procurement, reputational issues that require consideration	No	

## Additional Considerations

The table below sets out any additional issues arising from the proposals contained in this report and identifies the relevant paragraphs in the report where such issues are addressed.

Consideration	Yes/No	Reference in Report i.e. paragraph no.
<b>Resources</b> (e.g. Assets, ICT, Human Resources, Training & Development, Sustainability).	No	
<b>Strategic Policy Links</b> (e.g. IRMP, Authority Plan, Equality & Diversity, Partnerships, Environmental Impact).	No	
<b>Risk Management / Health &amp; Safety</b> (e.g. risk management and control measures, risk register score).	No	
<b>Consultation with Representative Bodies</b>	No	

## Supporting Information

Appendix 1 – Supplementary Annual Governance Report 2010/11

### Contact Officer

Anne Brown, Clerk to the Authority  
(01905 368331)  
Email: [abrown@hwfire.org.uk](mailto:abrown@hwfire.org.uk)

28<sup>th</sup> October 2011

Audit Committee  
Hereford & Worcester Fire and Rescue Authority

Dear Sir/Madam

## **Supplementary Annual Governance Report 2010/11**

This letter supplements my annual governance report issued on the 28<sup>th</sup> September 2011 in respect of the 2010/11 audit.

In order to fulfil the requirements of the Audit Commission Act 1998, auditors have to issue an audit certificate. The certificate marks the conclusion of the audit and the completion of the auditors other statutory responsibilities and duties, e.g. dealing with outstanding objections from electors.

In my annual governance report presented on the 28<sup>th</sup> September 2011, I explained that I could not issue my audit certificate until I had considered certain matters drawn to my attention during the course of my 2009/10 audit in relation to the early retirement of the outgoing Chief Fire Officer. This letter sets out how these matters have been addressed and concludes the 2010/11 audit.

### **Audit opinion and value for money (VFM) conclusion**

In my independent auditor's report dated the 29<sup>th</sup> September 2011 I issued an unqualified audit opinion, and concluded that, in all significant respects, the Authority had made proper arrangements to secure VFM.

I am required to revisit my audit opinion and value for money conclusion prior to issuing my audit certificate. I can confirm that no other significant matters have come to my attention that would impact upon, or alter, these judgements.

### **Audit certificate**

In my annual governance report presented to the Audit Committee on the 28<sup>th</sup> September 2011 and my independent auditor's report dated the 29<sup>th</sup> September 2011 I explained that I could not issue my audit certificate until I had considered certain matters drawn to my attention during the course of my 2009/10 audit in relation to the early retirement of the outgoing Chief Fire Officer. I have:

- addressed these matters in *Retirement of the Chief Fire Officer – report by the District Auditor* dated 28<sup>th</sup> October 2011 which will be presented to the Audit Committee on 7<sup>th</sup> November 2011; and
- in my *Supplementary Annual Governance Report 2009/10*, to also be presented to the Audit Committee on 7<sup>th</sup> November 2011, I propose to issue an ‘except for’ qualified VFM conclusion and certify my 2009/10 audit closed.

As these matters have now been dealt with and no other matters have come to my attention since that date that would have a material impact on the financial statements on which I gave an unqualified opinion and value for money conclusion I propose to issue my certificate of closure on the 2010/11 audit (Appendix 1 contains my draft certificate).

### — **Letter of representation**

Before I issue my certificate, auditing standards require me to ask you and management for written representations about your financial statements and governance arrangements. This was originally provided to me on 28<sup>th</sup> September 2011. However, given the time that has elapsed I am required to ask you for an update. Appendix 2 contains the draft letter of representation.

### **Independence**

I confirm that I have complied with the Audit Practice Board's ethical standards for auditors, including ES 1 (revised) - Integrity, Objectivity and Independence. I can also confirm there were no relationships resulting in a threat to independence, objectivity and integrity.

Yours sincerely

**Grant Patterson**  
*District Auditor*

## **Draft independent auditor's report to Members of Hereford & Worcester Fire and Rescue Authority**

### **Issue of the audit opinion on the accounting statements**

In my audit report for the year ended 31 March 2011 issued on 29 September 2011 I reported that, in my opinion, the accounting statements:

- gave a true and fair view of the state of Hereford & Worcester Fire and Rescue Authority's affairs as at 31 March 2011 and of its income and expenditure for the year then ended;
- gave a true and fair view of the financial transactions of the firefighters' pension fund during the year ended 31 March 2011 and the amount and disposition of the fund's assets and liabilities as at 31 March 2011, other than liabilities to pay pensions and other benefits after the end of the scheme year; and
- had been properly prepared in accordance with the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom.

### **Issue of value for money conclusion**

In my audit report for the year ended 31 March 2011 issued on 29 September 2011, I reported that in my opinion, in all significant respects, Hereford & Worcester Fire and Rescue Authority put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources for the year ended 31 March 2011.

### **Certificate**

In my report dated 29 September 2011, I explained that the audit could not be formally concluded on that date until my consideration of matters brought to my attention during the course of my audit for the year ended March 2010 in relation to the early retirement of the outgoing Chief Fire Officer had been completed. These matters have now been dealt with. No other matters have come to my attention since that date that would have a material impact on the financial statements on which I gave an unqualified opinion and value for money conclusion.

I certify that I have completed the audit of the accounts of Hereford & Worcester Fire and Rescue Authority in accordance with the requirements of the Audit Commission Act 1998 and the Code of Audit Practice issued by the Audit Commission.

**Grant Patterson**

Officer of the Audit Commission

8<sup>th</sup> November 2011

## Appendix 2

### Draft letter of representation

To:

Grant Patterson,  
District Auditor,  
Audit Commission,  
1st & 2nd Floors, No.1 Friarsgate,  
1011 Stratford Road,  
Solihull B90 4BN

### **Hereford & Worcester Fire and Rescue Authority - Audit for the year ended 31 March 2011 - Updated Management Representations**

I confirm to the best of my knowledge and belief, having made appropriate enquiries of other directors, officers and officials of Hereford & Worcester Fire and Rescue Authority, that:

- the representations made in the Letter of Representation signed and dated 28<sup>th</sup> September 2011 remain valid; and,
- specifically, since the date of approval of the financial statements by the Authority no additional significant post balance sheet events have come to my attention which would require additional adjustment or disclosure in the financial statements.

### **Signed on behalf of Hereford & Worcester Fire and Rescue Authority**

I confirm that this letter has been discussed and agreed by the Audit Committee on 7<sup>th</sup> November 2011.

Signed

Name

Position

Date