

## **NJC Reform: The Thomas Review – potential approaches to a review of terms and conditions**

### **Purpose**

To update the Fire Services Management Committee on matters regarding the Thomas Review, in particular potential approaches to changes to terms and conditions.

### **Summary**

This paper is for information and summarises the approaches that could be taken to identifying an employer position with regard to reviewing the national framework of conditions of service within the sector. That review will be steered by the Employers' Side of the National Joint Council.

### **Recommendation**

Fire Services Management Committee Members are asked to note the issues set out in the paper.

### **Action**

Officers to note members' comments and reviews and to take action accordingly, including making the Employers' Side of the NJC aware of views expressed at its meeting in February.

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### **Background**

1. The Department for Communities and Local Government (DCLG) commissioned Adrian Thomas in the summer of 2014, at least partially in response to views expressed by Sir Ken Knight in his earlier '*Facing the Future*' Review. He had highlighted a number of areas in the fire service which he felt could be reformed, arguing that the conditions of service of firefighters could be an actual or perceived barrier to change although he also recognised that there could be political or management self-limitation at local level.
2. The Thomas review was published in November 2016. A report was provided to FSMC in November that looked at the whole review and it was agreed that a further report would be produced to look at the specific issue of conditions of service which was one key them of the review (the others being: the working environment; industrial relations, retained duty system; and management of the fire and rescue service).
3. The full review can be found [here](#). Priorities and recommendations relating to the areas covered in this report are attached as an appendix to this report, although this report does not seek to address them all individually.

### **Governance on terms and conditions and the scope of Adrian Thomas's remit**

4. Mr Thomas's remit specifically covered England. He acknowledged that the National Joint Council (NJC) membership covers the whole of the UK. Recommendations on the NJC itself cannot be viewed in isolation from issues relating to conditions of service, as those are also UK-wide in application.
5. The Employers' Side of the NJC includes 10 LGA representatives<sup>1</sup>. It should be noted that the next meeting of the National Employers will be immediately prior to the NJC on 14 February. All members of the Employers' Side are responsible for taking wider political soundings on significant issues that come up at the NJC, as referenced in the role profile. There will need to be wider consideration of what consultation mechanisms would be appropriate for determining (and if necessary adjusting) an employers' position on what potentially could be fundamental changes to the national conditions of service framework. As is the normal practice, seeking views through both FMSC and the Fire Commission could be part of the process and the overlap in Employers' Side and FSMC memberships

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<sup>1</sup> Cllrs Chard, Knox, Malin and Spencer (Conservative), Cllrs Allan, Pulk, Timoney and Assembly Member Twycross (Labour), Cllr Hilton (LD) and Cllr Van den Hende (Ind)

assists with this. Noting Adrian Thomas' comments about some in the sector having concerns that their voices were not heard by the NJC, an approach involving regional meetings with FRAs could be considered.

6. Constitutionally, the Employers' Side's Advisory Forum is required to make recommendations on issues that come before the Employers' Side of the NJC. The Advisory Forum includes a mix of fourteen Chiefs, human resources, finance and legal professionals from a (UK-wide) range of different types of services. Ten of the fourteen were nominated by the LGA. It is suggested that if the FSMC wants to inform the position it takes on the approach to the review of terms and conditions, then the LGA-nominated representatives on the Advisory Forum should be asked to establish a task and finish group, meeting no-more than three times and reporting in time for the Fire Conference at the start of March. This task and finish group would be used to support the development of an LGA position in more detail, with three elected members from the LGA's representatives on the Employers' Side of the NJC participating in the task and finish group. The position developed in the task and finish group would in turn inform the approach of LGA representatives on the Employers' Side of the NJC and ultimately consideration by the full Employers' Side. The development of any formal Employers' Side position would in any case constitutionally be informed by consideration by the full Advisory Forum. Use of largely the same advisers would ensure consistency of approach.

#### **Conditions of service and industrial relations issues raised by Thomas**

7. Many of the recommendations relate to either slimming down national conditions of service, or in the case of senior management abolishing national provisions (the Gold Book). It is not clear where he sees the appropriate level for the determination of core contractual issues such as basic leave entitlement and occupational maternity and sick pay for the Grey Book workforce. For the purpose of this report it is assumed that they would be likely to remain part of core national provisions as is the case with local government staff.
8. The existing national conditions are collective agreements and can of course be varied by agreement of both sides. In the absence of such agreement then a decision by either side to 'walk away' from such agreements has no effect on key terms and conditions which are in any case incorporated into an employee's contract. All such provisions would remain in place until they could be re-negotiated at local level. Ultimately an employer can seek to change terms without agreement, but this can have significant employee relations consequences.
9. Thomas recommends that the NJC should still determine basic pay, albeit with a suggestion for greater local variation on total pay, possibly with the NJC 'acting regionally'. It is not clear how he envisages such an arrangement/structure working, or what the advantages are. For example, it could, mean clusters of services seeking to negotiate through regional joint bodies, possibly involving a core of NJC members, plus additional representation from within the cluster of services.

10. In the industrial relations section he also recommends the abolition of both the Technical Advisory Panel and Resolution Advisory Panel and going instead to Advisory, Conciliation and Arbitration Service (ACAS) when any external assistance is needed to resolve such local disputes. It is unclear what he perceives as the advantage. Reference to ACAS is an option available to FRAs already, but very little used. Both of these are nationally agreed procedures which have no direct impact on the contract of individual employees. Should a collective agreement not be possible on either abolishing (or amending) these processes, then the Employers' Side could choose to indicate that it would no longer be bound by the agreements. Before taking this step consideration would be given to balancing the benefit of doing so with the potential negative impact on employee relations.
11. It is too early for the national employers to have determined a position on the detail of any potential reform to the national pay and conditions framework and that position will be informed by the views of individual services. It meets next month. However it would be useful to examine what the structural options could look like from an LGA perspective. The purpose of the illustrative examples below is merely to begin a debate about this and should not be read as a set view on the where specific terms and conditions should be set, or that there are no other models that could be identified.

### **Model 1 – Broadly mirror the structure of the Green Book**

12. The Green Book covers Local Government Services staff in councils and in most cases non Grey/Gold Book employees in the fire service. It was created in 1997 to reflect the national single status agreement. Its 4 sections are:
  - 12.1. Constitutional provisions
  - 12.2. Core national conditions
  - 12.3. Other national conditions that can be varied by local agreement
  - 12.4. Joint advice
13. For the purposes of this report Parts 2 and 3 are most relevant. The core provisions (Part 2) relate to issues such as a pay spine, the hours in a standard working week, a sick pay scheme, a maternity scheme and (minimum) annual leave provisions.
14. Under this model the type of issues that could be defined as core in a new Grey Book could (for illustrative purposes) include:
  - 14.1. Basic pay for each role (including under the current pay structure rates for 'development' and 'competent')
  - 14.2. Retained Duty System retainer payments
  - 14.3. The standard number of hours in a working week
  - 14.4. Sick pay
  - 14.5. Annual leave entitlement
  - 14.6. Maternity (plus other adoption, parental and maternity support provisions)

- 14.7. Discipline
  - 14.8. Car allowances
15. All other elements of terms and conditions that would normally be viewed as contractual would be listed separately and the national agreement would clearly state that these could be amended by local collective agreement. This could potentially include the rolemaps albeit that each is generic in nature and should in any case now be supported by locally devised job descriptions, which will have local contractual implications. In the Green Book these largely reflect the arrangements for things such as overtime, weekend working, night rates, shift rates etc. that had been in place nationally under previous arrangements. Grey Book provisions for shift arrangements are exactly that, although it also includes some simple principles for making any changes to the pre-existing arrangements.
16. Under this structure it would be possible to add either principles or a framework through which local change could be achieved, or to stay silent on it. If such a model were to be considered then the extent of any additional framework would be something that could be teased out through seeking the views of FRAs.
17. Adrian Thomas made several references to the length of the Grey Book and the opportunity to move some elements into an employee handbook. He possibly underestimated the extent to which some of these issues could still be contractual, regardless of where they sit. However in the Green Book, Part 4 does gather together joint non-mandatory guidance on a range of issue such as job evaluation, equal pay and health and safety. In a 'new' Grey Book context this could include any issues on which both sides are content with there being joint national guidance. For example, it is possible that the firefighter fitness guidance produced last year would go here, as would guidance issued through the NJC-led Inclusive Fire Service Group and that on industrial relations. In terms of non-mandatory guidance it is likely that there is still a consensus among employers that there is a value in doing certain things once rather than in each service, which would accord with the view of the Thomas Review on a number of other issues.

#### **Model 2 - A short core set of terms and conditions**

18. This model could reflect the same items as listed in paragraph 14 above as being core conditions. However it would be accompanied by a simple statement that indicated that all other terms and conditions were to be determined locally.
19. On both of these options changes at local level would still require local negotiation to achieve a collective agreement. Failing that, individual services who wished to achieve change would need to look at seeking the agreement of individuals to vary the contract or to dismiss employees and offer re-engagement on new terms. Such an approach is likely to have significant employee relations implications.

### **Model 3 - A short core set of terms and conditions with a local consultation clause**

20. This would be similar to Model 2, but would be accompanied by clauses that provided for change to be implemented unilaterally by management at local level subject to certain criteria, timescales or protection arrangements being met. A variation of this option could be to include more elements within the 'core' national conditions section than under the other models to balance the greater flexibility provided to employers. Either variation of this option would enable change to be made without a collective agreement at local level. It is included as it is technically possible to construct a joint national agreement to provide for this. To minimise the risk of legal challenge when changes were being proposed locally, such a flexibility clause would still need to be exercised reasonably and if this approach were to be considered for the national agreement there would be a need for specific legal advice to be taken. However, it should be stressed that it is difficult to imagine a set of circumstances within current financial constraints that would lead the Employees' Side to agree to such an arrangement.

### **Other issues**

21. It is possible that after consultation with FRAs there is not a consensus that all specific elements of the reform proposed by Thomas should form part of a revised national framework. It is also possible that there might be conditions of service issues on which the Thomas Review is silent which FRAs would like the Employers' Side to pursue.
22. If reframing the balance between nationally and locally determined terms and conditions in the current financial climate proves after full consideration to be attractive to FRAs, a key question will be how can it be done in a way that makes a collective agreement on it possible?
23. Regardless of what approach is taken to developing an employer position, national change cannot be achieved through the NJC without a collective agreement. Both the statements made by the FBU concerning the Thomas Review and the lack of obvious levers for the employers indicate that this will not be an easy task.

### **Potential consequences of being unable to achieve reform nationally**

24. Individual services that were unhappy with the status quo being maintained could choose to introduce, across the individual service, terms and conditions different to the NJC provisions, including basic pay. They would still be faced initially with the challenge of seeking to reach a collective agreement to achieve this change

25. Alternatively as mentioned by Adrian Thomas the Secretary of State for DCLG could use powers within Section 32 of the Fire Services Act 2004 to create negotiating bodies which presumably could include a pay review body type approach. This outcome has risks for both employers who would lose ultimate control over outcomes and for the unions who potentially could see a reduction in the scope for collective bargaining.

### **The Gold Book**

26. This report is primarily about approaches that could be taken to the reform of the Grey Book. However, as mentioned earlier, Adrian Thomas also proposed that the national conditions of service for Brigade Managers be abolished (recommendation 42). The Review suggested that there was little evidence that this set of terms and conditions is used by services. The purpose of this report is not to refute his conclusion regarding the future of this particular set of national conditions. However, it should be pointed out that the most recent LGA survey in 2015 indicated that 52 per cent of services (26) still applied Gold Book pay, terms and conditions set through the NJC for Brigade Managers. An increase of 4 on the previous survey in 2012. With the exception of two services all others chose to pay above the national minimum pay rate.
27. In addition to pay the NJC for Brigade Managers has provisions covering (for example):
- 27.1. Sick pay
  - 27.2. Leave
  - 27.3. Pecuniary interest
  - 27.4. Discipline and grievance
  - 27.5. Performance appraisal
  - 27.6. Guidance on local salary structures
28. Some of these are specific and contractual (e.g. sick pay) and others more general (e.g. the need to establish local arrangements for discipline, grievance, performance appraisal etc.). Also, there is a general proviso that where terms and conditions are not covered by the Gold Book, they should be no less favourable than those applied to an Area Manager under the Grey Book.
29. In some ways this recommendation is 'simpler' than those relating to Grey Book, as it relates to abolishing a national framework, rather than the making changes to it. Although the same context would apply in relation to individual contracts i.e. any provisions that are currently those set nationally would continue to apply until re-negotiated locally. Discussion would also be required with the Association of Principal Fire Officers (now part of Prospect) initially to identify whether it would also wish to see such change.

30. It is intended that the national employers will seek the views of services on whether they would support a move away from the current national framework. Assuming that there was support to this, consideration would need to be given as to whether there should be jointly (with the Association of Principal Fire Officers) agreed guidance on the process for moving towards contracts that are entirely agreed locally.
31. It would be intended that the pay survey on Brigade Managers that is currently carried out to support national pay negotiations would still be carried out to support local pay processes. It should be noted that Adrian Thomas recommended “the introduction of a more sophisticated job evaluation programme...which allows inter authority comparisons”, as part of the move from national to local arrangements. It is likely that in some county services the senior management of the fire service is already paid on the basis of the job evaluation arrangements that are in place across the council.

#### **Next steps**

32. Members are asked to:
  - 32.1. Discuss and comment on the proposed models for a potential review of the national framework for conditions of service
  - 32.2. Discuss and comment on the potential approaches to consulting fire services.
  - 32.3. Note the role of the Advisory Forum (see paragraph 6) and agree that LGA-nominated members of the Forum are asked to establish a task and finish group to inform the development of an FSMC view on a review of terms and conditions and that three elected members from the LGA’s representatives on the Employers’ Side of the NJC participate in the task and finish group.
  - 32.4. Note that the issues contained in this report will be discussed by the Employers’ Slide of the NJC at its meeting on 14 February and that today’s debate will inform LGA representatives’ approach in those discussions.

#### **Financial implications**

33. The significant majority of Fire Service spending is on pay and other conditions of service. Therefore any adjustments to these arrangements will have financial implications, even if there is no change to the overall financial envelope.



### **Implications for Wales**

34. As stated earlier, the remit of Adrian Thomas' review covered England only. However the NJC framework of condition of service is UK-wide. This report addresses how the FSMC could develop a view on potential reforms to that framework. That view will subsequently inform discussions both within the Advisory Forum and the full Employers' Side, both of which have representatives from Wales, as well as Scotland and Northern Ireland.