

Workforce Report

Purpose of Report

To update the Fire Service Management Committee on matters in relation to fire service industrial relations and pension matters

Summary

This briefly describes the main industrial relations and pension issues at present.

Recommendation:

Members are asked to note the issues set out in the paper.

Action

Officers will take forward any work in line with Members steers.

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Pensions

Scheme Governance

1. The TPR admin and governance survey has now been published. The Firefighters scheme has been highlighted as having much improved governance (see pages three and four of the [summary report](#). A copy of the Research report can be found [here](#).
2. The Scheme Advisory Board recently hosted a joint Fire and Police Local Pension Board governance event, as part of their ongoing support to Local Pension Boards. The event was very successful. TPR attended and gave an overview of the results and their expectations.
3. The Scheme Advisory Board recently undertook their own survey of Local Pension Board governance and the results are published [here](#). The response rate from Fire Authorities was disappointing at 73 per cent compared to a 100 per cent response rate to TPR. The report makes a number of recommendations for boards and the expectation is that boards should consider these at their next meeting, one of those recommendations is that boards should provide an annual report to the Fire Authority.
4. The Scheme Advisory Board has recently appointed Weightmans as legal adviser to the board, and are seeking to make two further appointments. One as an actuarial adviser to the board and the second to undertake a review of administration and management costs for the Firefighter Pension Schemes.

LGA Firefighter Pension Scheme Communications and Events

5. The bulletins will now be published monthly – [bulletin 8](#) has just been published.
6. Slides from past events and details of upcoming events are published on the board [website](#).
7. In order to support Fire Authorities understand their responsibilities under GDPR for pension scheme data, there is now a new page for GDPR resources available [here](#). Privacy notes for use by Fire Authorities as data controllers of the pension scheme were commissioned and published for Fire Authorities use.

Scheme Regulations

8. The Home Office is consulting on draft amendments to the scheme regulations, the amendments are relatively minor, the consultation and draft SI are available [here](#). Once the SI has been laid a note of the amendment order and any action expected by Fire Authorities will be issued.

Valuation and Employer Contributions

9. The valuation results are not yet known, and therefore there is no indication of employer contributions from 2019 onwards. This is the same across all public sector schemes and as soon as information is released from HMT this will be shared with Fire Authorities.

Key Wider Workforce Issues

Broadening the role of the firefighter / Pay claim

10. The term 'broadening the role' refers to an NJC commitment to work jointly together on changes identified by each Side to ensure that there is a pay framework alongside terms and conditions in the fire and rescue service which reflect the responsibilities of, and current and future demands on, the service and the profession. Substantial work to date has looked at areas such as environmental challenges, emergency medical response, community engagement, inspection and enforcement and multi-agency emergency response (which includes MTFA).
11. Both sides of the National Joint Council (NJC) remain fully committed to identifying a mutually acceptable resolution and negotiations are therefore continuing with frequent meetings taking place to scope potential changes to roles and to explore how that could be reflected in terms of pay. Those negotiations are constructive in nature.
12. As members are aware the latter will be directly affected by available funding on a sustainable basis. Both sides of the NJC therefore also remain committed to joint political lobbying in that regard. Since the last meeting of the FSMC that lobbying has continued.
13. The NJC is a UK-wide body and members may therefore be interested to know that the Cabinet Secretary for Local Government and Public Services in Wales has, while expressing his view that any outcome must also work well for Wales, indicated that he is happy for further discussion to take place. In Scotland, the government has indicated that it is prepared to fund an increase in firefighter pay. This is likely to be sufficient to cover both the negotiations through the NJC and a number of local issues. Meetings with Ministers in Scotland and Wales will also take place later this month. Work is continuing in respect of Northern Ireland, mindful of the unique circumstances there at present.
14. Following an NJC meeting with the Home Office Minister for Policing and the Fire Service and in the context of his highly valuing the role that firefighters play in protecting our communities and recognising the need for them to be rewarded fairly for the job that they do, the Minister indicated that he wished to receive additional information.
15. Since the last meeting of the FSMC, the NJC has provided a detailed joint response setting out the strategic outline programme for expanding the role of fire and rescue service personnel.
16. The Minister also asked the employers to provide an assessment of fire and rescue authorities' ability to fund an increase from their existing budgets. In this regard the Minister made reference to the government's latest assessment which shows 'that single purpose fire and rescue authorities' reserves have increased by 88 per cent to £615 million between

31 March 2011 and 31 March 2017'. He wished to see 'a strong justification from the employers' side setting out why additional funding to meet an increased pay award cannot be prioritised from the fire and rescue authority budgets'. Detailed work has since taken place and a response provided setting out the financial implications if should such a position was adopted and repeating the principle that it would be fiscally inappropriate to endeavour to use reserves to fund on-going pay costs.

17. We intend to undertake a further round of meetings with Chairs and CFOs to take stock. The three meetings in the South West, Manchester and London will take place over the end of June to mid-July. Discussion will also cover any potential pay award while the wider negotiations continue.

Inclusive Fire Service Group

18. This group is NJC led and includes representation from NJC employer and employee secretariats, the NFCC, RFU, FBU and FOA. The Independent Chair is Professor Linda Dickens.
19. Members will be aware of the work previously undertaken by this group on strategies to deliver improvements at local level in respect of inclusion, diversity and cultural issues such as bullying and harassment. The strategies were issued to FRAs/FRSs on 17 June and were very well received.
20. As the strategies will have now had a year to become embedded in services it is intended to commence a monitoring exercise by the end of July.

Court Of Justice of the European Union - Ville De Nivelles V Rudy Matzak

21. This recent case concerns a 'volunteer' firefighter in Belgium. However its impact will be felt more widely, including in the UK.
22. In essence it has determined that stand-by time of a worker at home who is obliged to respond to calls from the employer within a short period must be regarded as 'working time'.
23. We are currently considering the implications of this determination on the retained duty system and are in the process of obtaining a QC opinion in order to inform guidance to FRAs. A sounding board was formed to inform the content of the instructions to the QC and it will shortly meet with the QC to further explore the picture of how the retained duty system works in the UK.

Employment Tribunal Cases - Pension Scheme Transitional Protection Arrangements

24. Members will recall that the Employment Tribunal found in favour of fire authorities. The

FBU, who act on behalf of the claimants, lodged an appeal. The Employment Appeal Tribunal decided to join the appeal with that in the McCloud case relating to judges (which found in favour of the judges). That appeal has been heard since the last meeting of the Fire Commission.

25. The EAT allowed the firefighters' appeals in certain respects. However, the EAT has not examined the evidence and found there was discrimination. The EAT's judgment simply means that, in its view, the ET was mistaken in the law in certain limited respects. However, in regard to those matters, the EAT recognised that there are grounds to appeal against its decision and the Respondents, including the FRAs, were given permission to appeal to the Court of Appeal. The reasons for allowing the firefighters' appeals in so far as the EAT did so, were very limited and the Respondents to the Claims, the Governmental bodies and the Fire and Rescue Authorities, succeeded on a significant number of points.
26. The appeal to the Court of Appeal is now expected to be heard in November 2018.
27. In addition to the above, the FRAs have a separate appeal based on Schedule 22 of the Equality Act 2010. At the initial stage the Employment Tribunal found against the fire authorities. The appeal is based on the belief that the FRAs have been very much stuck in the middle between the Governmental bodies and the FBU and the dispute between those bodies. The FRAs have done nothing other than seek to apply the law as determined by others. The EAT has ordered that this separate appeal should be stayed until the Court of Appeal has given its judgment.