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Workforce Report

Purpose of report

For information.

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 are asked to note member comments

| | | |
|-------------------------|--|--|
| Contact officer: | Gill Gittins (industrial relations) | Clair Alcock (pensions) |
| Position: | Principal Negotiating Officer | Fire Pensions Adviser |
| Phone no: | 020 7187 7335 | 020 7664 3189 |
| E-mail: | gill.gittins@local.gov.uk | clair.alcock@local.gov.uk |

Workforce Report

Pensions

Valuation and Employer Contributions

1. The draft valuation results are now known and for firefighter pension schemes in England this means
 - 1.1. The employer cost cap floor of 14.8 per cent has been breached and improvements need to be made to rectify the breach.
 - 1.2. The employer cost cap was set at 16.8 per cent and at the recent valuation has been valued at 116 per cent.
 - 1.3. For information this position is reflected across all the devolved governments with indicative change of accrual rate for the period 1st April 2019 to 31st March 2023 as follows

| | Employer Cost Cap | 2016 Valuation cost cap | Current Accrual | Indicative accrual change |
|---------------------|----------------------|-------------------------------|--------------------|---------------------------------|
| England | 16.8% | 11.6% | 1/59.7 | 1/51.2 |
| Wales | 17.1% | 12.3% | 1/61.4 | 1/53.1 |
| Scotland | 15.8% | 10.6% | 1/61.6 | 1/52.6 |
| Northern Ireland | 18.3% | 13.9% | 1/64.8 | 1/57.1 |

2. Under paragraph 3 of rule [150A](#) of the scheme rules the Home Office must consult with the [Scheme Advisory Board](#) on the action to be taken to bring the cost back within the target cost. If no agreement can be reached, the default mechanism is to amend the rate at which benefits accrue.
3. The scheme advisory board have consulted with the cost committee on options to recommend to government, and whilst the final proposals are yet to be agreed the likely options for SAB to consider which option will be taken forward to Home Office are;
 - 3.1. 'Variable accrual', this introduces a choice to members to reduce their contributions by x per cent (the committee wanted this to be at 3 per cent but that might not be possible) and receive less pension, this may be desirable to lower paid members who want to increase their take home pay, or higher paid members who want to limit the growth of the pension within the tax limits so they

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don't incur charges. This option relies on being able to assume a low take up rate, however this may be difficult to get government agreement. This option will also require a good supporting argument, as this potentially comes at a cost to the Home Office; to illustrate that a 3 per cent reduction in member contributions over a four year period with a 10 per cent take up would cost Home Office

- 3.2. As above but with early retirement factors based on the same principles as Scotland and Wales, where the early retirement factors are calculated based on different assumptions¹, which has the effect of lowering the early retirement factors. It should be noted that this might be difficult to achieve, early retirement terms were part of the negotiated package at the introduction of the 2015 scheme and government did not agree to early retirement terms as had been brought into Scotland and Wales. It should also be noted that changing early retirement terms could lead to changing employment trends.
- 3.3. Reducing member contributions by 5.2 per cent for four years. The treasury have already given public sector employers a clear steer that this is not the time to reduce scheme income. Nevertheless it remains an option for the SAB to propose to government.
- 4. Employer contribution rates will increase to an indicative level of 30.2 per cent from the current average of 17.6 per cent from 1 April 2019.**
5. This is an average rate across the three schemes, all three schemes individual rates will rise but these figures have not yet been calculated by GAD. This increase is mainly due to the reduction in the SCAPE discount rate, from 2.8 per cent to 2.4 per cent as confirmed in budget 2018.
6. For information this position is reflected across all the devolved governments with indicative employer contribution rates as follows

| | Current Average Contribution | Indicative average contribution from 1 April 2019 |
|------------------|---------------------------------|---|
| England | 17.6% | 30.2% |
| Wales | 18.7% | 28.3% |
| Scotland | 21.4% | 28.5% |
| Northern Ireland | 24.3% | 34.1% |

¹ An assumed increase between early retirement and normal retirement being in line with the index adjustment (AWE) [Paragraph three of rules 70([WSI 2015/622](#)) and 61([SSI 2015/19](#))], whereby in England the increase is in line with PIA 1971¹[Paragraph three of rule 61 ([SI 2014/2848](#))]

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Scheme Advisory Board

7. The levy for the 2018/2019 year of £7.69 per active member had now been invoiced for. This allows the SAB to provide increased centralised support and is designed to meet the cost effectiveness objective.
8. The SAB benchmark project will formally commence from 19 November 2018, with surveys being sent to Scheme Managers and Administrators. This is an essential project for the SAB as it will the board to consider the future of administering the Firefighters' Pension Scheme and whether there are cost savings that can be made.

LGA Firefighter Pension Scheme Communications and Events

9. Under the regulations the Fire Authority is defined as the scheme manager, and all responsibility for the scheme rests with the scheme manager. The pensions team are now offering short, high level scheme manager training sessions to elected members on their duties as scheme manager. Any Fire Authority interested in receiving training should email clair.alcock@local.gov.uk.

Key Wider Workerforce Issues

Broadening the role of the firefighter / Pay

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, health and community, inspection and enforcement and multi-agency emergency response (which includes MTFA).
11. The FBU has recently made its aspirations in terms of pay clear. It seeks an uplift in pay of 17 per cent. A copy of the letter was provided to Chairs and Chief Fire Officers by email when received on the 18th October. There was no reference to a time period other than: *'We are aware that employers have previously mentioned making increases in phases. In the event of an agreement, we seek increases to be paid as quickly as possible.'* From an employer perspective, FRA Chairs and Chief Fire Officers have been clear on the maximum contribution that could be made to any pay award in each phase and that any further increase would need to be as a result of securing additional and sustainable funding and where directly applicable potentially greater precept flexibility. That remains the national employers' position, recognising also the need to broaden the role.
12. 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 both on the content of any deal and related pay.

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13. Political lobbying across the UK in respect of funding is also continuing (both separately and when appropriate jointly).
14. In so far as England is concerned, a substantial amount of detailed information has already been provided to the Home Office to support the case, including in respect of reserve levels. Discussion has moved on and since the last FSMC meeting, meetings have taken place with civil servants separately as employers and jointly with employee representatives as appropriate and that is continuing. We are currently preparing additional information identified as being of interest at those meetings including questions to the National Employers about associated budget matters in order to further inform Ministerial considerations. In doing so we are working with the LGA's Senior Adviser (Finance) and a number of fire service finance directors.

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

15. This recent case concerned a 'volunteer' firefighter in Belgium. However its impact will be felt more widely, including in the UK. 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'.
16. Through the auspices of the National Employers we have been working with a QC to inform guidance to FRAs on the judgement.
17. We put in place a sounding board with a mix of HR and legal advisers from each of the UK administrations as well as one of the LGA's senior employment law advisers to be sure the questions asked and information provided to the QC would be appropriate
18. The Sounding Board has met with the QC to further explore the picture of how the retained duty system works in the UK. We also put in place a meeting to provide demonstrations of the three main availability management systems used by FRSs.
19. FRAs/FRSs will be further updated as soon as possible.

Court of Appeal – Pension Scheme Transitional Protection Arrangements

20. 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).
21. 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 judgement simply means that, in its view, the ET was mistaken in the law in certain limited respects.

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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.

22. The appeal to the Court of Appeal took place earlier this month and the judgment is awaited.
23. 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 judgement.
24. We continue to work closely with the Steering Group set up by the National Employers at the start of the legal process following agreement that the LGA would represent all UK fire and rescue services on a collective, cost sharing basis. While covered by the collective approach, the cases in Scotland, Wales and Northern Ireland are currently stayed pending the outcome of the English test cases. The Steering Group has legal and HR advisers from varying types of fire and rescue services across the UK, the Advisory Forum legal adviser, employers' secretariat, and from the LGA its Corporate Legal Adviser and a Senior Employment Law Adviser.

Secretariat support

25. Aside from the formal NJC dispute resolution processes, the Joint Secretariat can provide informal assistance where the local parties believe a matter is proving difficult to resolve. Most recently we have supported a service in resolving a broad range of harmonisation issues and the employers' secretariat has supported discussions which resolved a Trade Dispute.
26. In terms of formal processes, the Joint Secretariat has facilitated agreement for a service on a number of issues. In addition the NJC's Technical Advisory Panel has met. The outcome of that has been reported to FRAs and services by [circular](#).

Next Steps

27. Officers to take forward members comments