

25 January 2019

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

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25 January 2019

Workforce Report

Pensions

Valuation Consultation

1. As previously advised the results of the 2016 valuation mean that the employer cost cap floor of 14.8 per cent has been breached and improvements need to be made to rectify the breach. As required by the regulations, the scheme advisory board must consult with the Home Office on the action to bring the cost back within the target cost.
2. The scheme advisory board have now submitted their proposal to improve the early retirement factors based on the same principles as Scotland and Wales. 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. The board are awaiting the Home Office response after which there is a three month timeframe in which to further consult. If no agreement can be reached with Home Office the default mechanism is to amend the rate at which benefits accrue, which would introduce an improved accrual rate of 1/51.2

Scheme Advisory Board (SAB)

4. The SAB [benchmarking project](#) was launched in November and surveys have been sent to all Fire and Rescue Authorities as employers. This is an essential project for the SAB as it will enable 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

5. 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.
6. The package of support provided by LGA to Fire and Rescue Authorities (FRAs) to support the understanding and management of pension responsibilities during 2018 has provided the following;

14 Local Pension Board training / meetings	Administrator training
Scheme Manager Training	Software provider training
4 SAB and 8 SAB committee meetings	3 technical group meetings
3 Communication group meetings	15 regional meetings
Two Day Annual Conference	2 subject specific workshops
Ten sector wide events	Joint Governance conference

25 January 2019

Key Wider Workforce Issues

Broadening the role of the firefighter / Pay

7. The term 'broadening the role' refers to a National Joint Council 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 Marauding Terrorist Firearms Attacks).
8. Frequent meetings are taking place during January and as such an oral report will be provided at the meeting.

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

9. This case concerned a 'volunteer' firefighter in Belgium. However its relevance 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'.
10. Through the auspices of the National Employers we have been working with a Queen's Counsel to inform guidance to FRAs on the judgment.
11. 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.
12. 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 online availability management systems used by FRSs.
13. The Sounding Board meets again this month and we expect to issue guidance to FRAs shortly.

Court of Appeal – Pension Scheme Transitional Protection Arrangements Discrimination Claims

14. Members will recall that the Employment Tribunal (ET) found in favour of fire authorities. The Fire Brigades Union (FBU), who act on behalf of the claimants, lodged an appeal. The Employment Appeal Tribunal (EAT) decided to join the appeal with that in the McCloud case relating to judges (which found in favour of the judges).

25 January 2019

15. The EAT allowed the firefighters' appeals in certain respects. However, the EAT did not examine the evidence and find there was discrimination. The EAT's judgement simply meant 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 were 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.
16. The appeal to the Court of Appeal took place in November and the judgment was received just before Christmas. It found that the transitional protections introduced with the new Pension Scheme in 2015 were unlawfully discriminatory on grounds of age. The Court took the view that, having introduced the protections, the Government should justify their discriminatory impact but that it had failed to do so. The Court did not make a finding that there was any liability in relation to the claims for equal pay or indirect race discrimination.
17. We preserved the immediate position of the FRAs to pursue an application to appeal by registering the application with the Court of Appeal. The Government did likewise. Such applications have to be made to preserve the position on applying to the Supreme Court, and in nearly all cases the Court of Appeal rejects them, which became the case.
18. A meeting of the Steering Committee and legal representatives including Adrian Lynch QC was held to consider whether to take an appeal forward if leave was granted. Included in that consideration was application to the Supreme Court and the position the Government might take. FRA/FRSs have been kept up to date on developments.
19. The Government has now sought permission to appeal from the Supreme Court and, therefore, in line with the discussion within the Steering Committee we have also sought permission.
20. It will be approximately 3 months before we hear whether the applications to appeal are accepted, and if they are then the hearing of the appeal is unlikely to be until towards the end of this year at the earliest. Please note those time estimates are very much dependent on the number of cases the Supreme Court is dealing with.
21. In the interim there are no steps that fire and rescue authorities need to take, including in respect of firefighters' pensions. This is because any such actions will ultimately depend on the outcome of the appeal, if the applications to the Supreme Court are accepted, and/or on the outcome of any tribunal decision on remedy, should the cases remain remitted to the tribunal on that point. There is also the possibility that if necessary remedy issues could be resolved through discussions between the parties, but with appeals pending there are no indications at this time of such discussions.

25 January 2019

22. We will continue to work closely with the Steering Committee 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 Committee 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.
23. In addition the FRAs still have the live and separate appeal in relation to their potential defence under Schedule 22 (which is that the FRAs had no choice but to follow the Government's legislation) which again was fully considered with the Steering Committee and legal representatives.

LGA Diversity Masterclasses

24. The Workforce team is involved in each of these Masterclasses for authority members and will be making a presentation on gender pay gap issues at each of the five events. Their presentation looks at the current position on the gender pay gap in fire authorities and goes onto explore options for closing that gap, such as improving the recruitment and retention of women and encouraging culture change to further support women working in the fire service.

Implications for Wales

25. Each of the wider workforce matters in this report have the same implications for Wales as for England and we are working with WLGA, Welsh FRAs and FRSs as appropriate. The WLGA is one of the four employer stakeholder bodies on the NJC for Local Authority Fire and Rescue Services.
26. In respect of pensions, the Welsh Scheme Advisory Board has consulted separately on the breach to the employer cost cap. The LGA Firefighters Pensions Adviser attends the Welsh Scheme Advisory Board meetings.

Next steps

27. Officers to take forward members comments.