

24 May 2019

## **Workforce Report**

### **Purpose of report**

For information.

### **Summary**

To update the Fire Commission on matters in relation to fire service industrial relations and pension matters at present.

### **Recommendation**

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

### **Action**

Officers to action any matters arising for future work

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24 May 2019

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### **Pensions**

#### Valuation and Employer Contributions

1. HM Treasury issued a [Written Ministerial Statement](#) on 30 January 2019 stating that the cost cap rectification will be paused pending the outcome of appeals in the Sargeant and McCloud cases on transitional protections.
2. HM Treasury has now issued new [directions](#) which remove references to the cost cap mechanism, while confirming that public sector employers should continue to pay the contribution rates set by the interim valuation results from 1 April 2019.
3. The Government Actuaries Department (GAD) has now finalised the 2016 valuation. The employer contribution rates from 1<sup>st</sup> April 2019 are set out below.
  - 3.1. 1992 scheme (includes special members of the 2006 scheme) 37.3 per cent pensionable pay
  - 3.2. 2006 scheme 27.4 per cent of pensionable pay
  - 3.3. 2015 scheme 28.8 per cent of pensionable pay

#### Exit Payments Cap

4. Government have now launched their consultation on exit payments from the public sector, which closes on 3 July 2019. The exit cap introduces a £95,000 cap on exit payments made by the employer.
5. There are two exit payments made by Fire and Rescue Authorities in the context of pensions which could be subject to the cap. These are;
  - 5.1. Enhanced commutation payments in the 1992 scheme
  - 5.2. Authority enhanced early retirement payments in the 2006 and 2015 scheme
  - 5.3. The draft regulation allows for some exemptions to these payments; where an employer agrees to enhanced commutation in the 1992 scheme or for the 2006 and 2015 scheme allows authority initiated early retirement for fitness related reasons.
  - 5.4. The regulations also allow the authority to waive the cap in discretionary circumstances, however they must have Treasury consent.
6. Further detail on the exit payments will be available shortly and circulated to the Fire Commission.

24 May 2019

Booth v Mid and West Wales [2019] EWHC 790 (Justice Fancourt)

7. This case concerned four different types of allowance across the 1992, 2006 & 2015 schemes for members of the Welsh Firefighter Pension Schemes, however its relevance will be felt more widely, including in the UK. In essence it determined that certain types of allowances were pensionable and others not. Whether the allowances were pensionable or not depend on a range of factors including the contract of employment.
8. Through the auspices of the Scheme Advisory Board we will be seeking legal advice on how authorities should seek to rectify any currently incorrect allowances, informal guidance on the case will be made available shortly.
9. Fire Authorities should seek to ensure that pensionable pay decisions are made based on the regulations and on current case-law.

Scheme Advisory Board (SAB)

10. During 2018/2019 the Firefighters' England SAB embarked on a project to benchmark the cost and effectiveness of administration and management of the Firefighters Pension Scheme. This will allow the SAB to consider the future of administering the Firefighters' Pension Scheme and whether there are cost savings that can be made. The draft report is due to the SAB at their next meeting in June.

LGA Firefighter Pension Scheme Communications and Events

11. The LGA hosted a joint Police and Fire Local Pension Board governance event on 15 May 2019. This event supports Fire Authorities in their role of scheme manager and their responsibilities under the scheme.

**Key Wider Workforce Issues**

Broadening the role of the firefighter / Pay

12. 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 MTFAs).
13. This has been a complex negotiation. Substantial amounts of work have been undertaken jointly around how such a broadened role could look, the views of interested parties have been sought and in-depth joint work carried out alongside our work with the advisers to the National Employers. Both FSMC and Fire Commission have received regularly updates at meetings and all Chairs, CFOs and Directors of Human Resources (or equivalents) have been updated through various communications and meetings.

24 May 2019

14. That work includes not just the content of any deal but also the guidance to underpin any such deal on matters of concern to firefighters and as identified through the independent evaluation of the NJC trials e.g. mental well-being, training, equipment etc.
15. This has all taken some time, in order to move things forward and to be able to meet the financial timetables of governments, the employers' side of the NJC (National Employers) wrote to the employees' side secretary in March setting out a proposed way forward in the form of a draft agreement. The [circular](#) issued at the time also provided FAQs for local use.
16. The Fire Brigade Union (FBU) chose to consult its members via a postal ballot on two points. Firstly, a recommendation to reject the proposal. Secondly, to agree talks should continue. The outcome was 'yes' on both points. While at the time of writing this report a formal response on the proposal has not been received from the employees' side secretary, it is clear that the extent of flexibility sought by FRAs was problematic. Furthermore, it did not meet the FBU aspirations of a 17% increase over a short period of time. The National Employers will now consider the outcomes, particularly in light of any formal response.
17. A successful conclusion to the negotiation will in any case be directly affected by available funding on a sustainable basis. We therefore remain committed to lobbying the Home Office, and other government departments across the UK as appropriate. It is very clear that FRAs cannot afford to contribute more than 2.0% in any settlement year and that will be difficult for some.
18. A substantial amount of detailed information has already been provided to the Home Office to support the case for additional and sustainable funding including in connection with queries around reserve levels and any 'fat' in existing revenue budgets. Meetings have taken place with civil servants separately and jointly as appropriate.
19. Members will be aware from recent communications that the National Employers are working in partnership with the National Fire Chiefs Council (NFCC) in order to further strengthen the business case. We also continue to meet with Home Office officials in that regard. The Government's approach to the fire service in respect of a Spending Review will no doubt also be a factor.

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

20. This case concerned a 'volunteer' firefighter in Belgium. However, its relevance will be felt more widely, including in the UK. In essence it determined that in this case 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'.

24 May 2019

21. Through the auspices of the National Employers we have worked with a QC and a sounding board consisting of 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 inform guidance to FRAs on the judgment.
22. Given the legal privilege issues, information has now been provided to FRA legal advisers. In addition, one of the LGA's senior employment law advisers has attended meetings of the Fire Lawyers Network and, together with the Secretariat, meetings of the the NFCC HR Forum and its Council to discuss the outcomes. A similar session for a future Fire Commission meeting can be arranged if members wish.

#### Court of Appeal – Pension Scheme Transitional Protection Arrangements Discrimination Claims

23. Members will recall that we are awaiting the decision of the Supreme Court on whether or not the fire authority application to appeal has been accepted
24. In the interim there are no steps that fire and rescue authorities need to take, including in respect of firefighters' pensions.
25. 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. 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.
26. 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

27. The Workforce team was involved in each of these Masterclasses for authority members, making a presentation on gender pay gap issues at each of the five events. Their presentation looked at the current position on the gender pay gap in fire authorities and went on to 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. A member of the Workforce team can also present at a future Fire Commission meeting if members so wish.

#### Industrial Relations Training

28. Members may be aware that the National Joint Council secretariat can, on joint request, spend a day with a service (senior management and key local union representatives) to

24 May 2019

work with it to review its industrial relations. The day is based on the NJC's Protocol for Good Industrial Relations, recognising what is working well, and encouraging the local parties to jointly identify where improvement is required and how best to achieve it. The training is well received and we have recently worked with two services. Another request has also been received.

#### Inclusive Fire Service Group (IFSG)

29. This group is NJC led and includes representation from NJC employer and employee secretariats, the NFCC, FRSA, FBU and FOA. The Independent Chair is Professor Linda Dickens.
30. 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.
31. It is interesting to see the crossover with many of the group's findings in the more recent HMICFRS report. Given the strategies provided by the group, and the very high level of commitment to them from FRAs and FRSs, the time is now right to revisit the strategies and assess whether they have been used and if so to what extent improvement is starting to be delivered in comparison to the previous position.

#### **Implications for Wales**

32. 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.
33. In respect of pensions, GAD has valued the Welsh Firefighter schemes separately and different employer contribution rates will apply.