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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.

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## **PENSIONS**

### *Exit Payments Cap*

1. 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.
2. There are two exit payments made by Fire and Rescue Authorities (FRAs) in the context of pensions which could be subject to the cap. These are;
  - 2.1. Enhanced commutation payments in the 1992 scheme
  - 2.2. Authority enhanced early retirement payments in the 2006 and 2015 scheme
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.
4. The regulations also allow the authority to waive the cap in discretionary circumstances, however they must have treasury consent.
5. A technical note on the effect of exit payments on the Firefighters Pension Schemes can be found [here](#). LGA have responded to the consultation which can be found [here](#).

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

6. This case concerned four different types of allowance across the 1992, 2006 and 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.
7. 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. A factsheet that gives the detail of the case can be found [here](#).
8. Fire Authorities should seek to ensure that pensionable pay decisions are made based on the regulations and on current case-law. The LGA bluelight pensions team are running a pensionable pay workshop at Smith Square on 18 July 2019, booking will be available soon.

### *Scheme Advisory Board (SAB)*

9. 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 in order to calculate an administrative cost per member.
10. The draft report has been presented to the SAB who are now considering their recommendations.

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11. However it should be noted that not all FRAs were able to provide cost data and there were some gaps in the data even where data was provided. It is not known why data was not fully available. There are some concerns that there was no senior management oversight of the submission of the survey.
12. This is the first time such an exercise across the Scheme has been undertaken. This work should therefore be seen as the first step towards using an evidence-based approach to ensure the effective and efficient administration and management of the Scheme.

#### *LGA Firefighter Pension Scheme Communications and Events*

13. The Scheme Advisory Board sponsor the LGA to host a number of conferences and workshops during the year designed to support Fire and Rescue officers and elected members with their responsibilities under the scheme. Details of events can be found [here](#).
14. The first three events of the year, 'Date: Pensions in a digital era', 'Firefighters and Police Local Pension Boards governance conference' and 'Ill-Health and Injury' have now been held. Each event was well attended and feedback has been extremely positive. Conferences on Pensionable Pay and Pensions Tax along with the popular two day AGM will be held later in the year.

#### **KEY WIDER WORKFORCE ISSUES**

##### *Broadening the role of the firefighter / Pay*

15. 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 Marauding Terrorist Firearms Attack).
16. 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, Chief Fire Officers and Directors of Human Resources (or equivalents) have been updated through various communications and meetings.
17. 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.
18. 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

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way forward in the form of a draft agreement. The [circular](#) issued at the time also provided FAQs for local use.

19. The Fire Brigades Union 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. At the recent NJC meeting, employer members indicated that a formal response from the employees' side would be helpful in accurately identifying all areas of concern. Furthermore, that on the basis of receiving that information a short period of further negotiation should take place. This was agreed and [communicated](#) to FRAs.
20. As part of that employers' communication, we indicated that, depending on the outcome of those negotiations, it may be necessary to hold further consultation meetings with Chair/Portfolio Holders and Chief Fire Officers. If it does prove to be necessary two dates have been set aside and Chair/Portfolio Holders and Chief Fire Officers advised accordingly:

15 July	13.30 to 16.00	London
17 July	11.00 to 13.30	Manchester
21. 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. In previous consultation meetings with Chairs and Chiefs it had been clearly indicated that FRAs cannot afford to contribute more than 2.0% in any settlement year and that will be difficult for some.
22. 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.
23. 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. Conscious of the potential for some crossover with the wider Spending Review bid, we will also continue to work with lead employer and FSMC members.

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

24. 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'.

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25. Through the auspices of the National Employers we 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 on the judgment. For legal privilege reasons this was circulated to FRA legal advisers.
26. At the most recent Fire Commission meeting members indicated that they would welcome a presentation on this matter similar to that already provided to the Fire Lawyers Network, NFCC HR Forum and its Council.

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

27. 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.
28. In the interim there are no steps that fire and rescue authorities need to take, including in respect of firefighters' pensions.
29. 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.
30. 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.

**Industrial Relations Training**

31. Members will 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 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. We shall shortly be working with a third.

**Inclusive Fire Service Group (IFSG)**

32. 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.
33. 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.

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34. 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**

35. 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.
36. In respect of pensions, GAD has valued the Welsh Firefighter schemes separately and different employer contribution rates will apply.