

## **Workforce Report - Industrial relations and pensions**

### **Purpose of the Report**

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

### **Summary**

This paper is for information and briefly describes the main industrial relations and pension issues at present.

#### **Recommendation:**

- (1) Discuss and share local issues relevant to the national positions.
- (2) National pension Scheme Advisory Board – to agree the nominations made by the LGA political groups (paragraphs 9 to 17)
- (3) National Employers' Advisory Forum - decide upon LGA adviser nominations (paragraphs 47 – 50 and Appendix A)

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

## PENSIONS

### Governance Update

1. The 2013 Act created two governance boards a Local Pension Board and Scheme Advisory Board; the Local Pension Board must be established by the Scheme Manager, whereas the Scheme Advisory Board is established by the regulations.

### Local Pension Boards

2. Regulation 4 of the 2014 regulations makes the authority responsible for managing and administering the 2015 pension scheme and any statutory scheme connected with it, and as such is referred to as the 'scheme manager'.
3. Under regulation [5(2)] the scheme manager can delegate any of its functions under these regulations to such person or persons authorised in that behalf by the scheme manager. However, please note that person only fulfils the role of scheme manager under those delegated powers. The position of scheme manager remains with the authority.
4. Under regulation [4A(1)] of the amended 2014 regulations, it is the responsibility of the scheme manager to establish a local pension board no later than 1st April 2015.
5. Local Pension Boards have now been established in the main across all Fire authorities in England, Wales, Scotland and Northern Ireland
6. Established in this context means that the scheme manager must have approved the establishment of the Local Pension Board and the Local Pension Board's composition and also the terms of reference.
7. Whilst the regulations called for the boards to be established at 1st April 2015, a period of grace was recognised to allow 4 months for the boards to become operational. It is recognised that a few authorities have had delays in resourcing their pension boards which has contributed to a delay in arranging the first meeting. These first meetings should be conducted as soon as possible.

### Training

8. Training was arranged and provided across 5 sessions in July and August to enable scheme managers to fulfil their duties. The training was well attended with only four authorities unable to send any attendees, and described in feedback as 'instructive, practical and without flooding the audience with complexity'.

### **Scheme Advisory Board**

9. The Scheme Advisory Board is now in the process of being established, the post of chair has now been advertised. The link is shown below.

<http://publicappointments.cabinetoffice.gov.uk/appointment/chairman-firefighters-pension-scheme-fps-national-advisory-board/>

10. The Scheme Advisory Board is responsible for providing advice to:

- a) The Secretary of State on the desirability of making changes to the scheme and any connected scheme
- b) Scheme Managers and Local Pension Boards in relation to effective and efficient administration and management of the Scheme

11. There will be 7 employee representatives (4 seats to the FBU and 1 each to FOA, RFU & APFO) and 7 employer representatives.

12. DCLG has invited the unions to propose their 7 members by the 18th of September. DCLG expect the LGA to be in a position to do likewise for employer representatives within much the same timescale although we have brought to their attention that the FSMC does not meet until 25th. In theory, if we do not meet the deadline DCLG could choose for itself as the regulations do not define that nominations have to come from the LGA.

13. Seven is not a number that works ideally from an LGA political proportionality point of view. However, given that is the figure Government decided upon and put in the Regulations, there is no flexibility around that. Hence we have been in discussion with the political group offices on that point. In addition, consideration of this matter at the last FSMC meeting concluded that the political group offices should also be asked to put forward the names of appropriate people.

14. As a result of that discussion, as far as political proportionality is concerned, seats will be allocated as follows:

3 Conservative  
2 Labour  
1 Liberal Democrat  
1 Independent

15. In considering nominations, the political groups were advised that pension specific knowledge and experience is not essential (although preferable), as training will be provided. An interest in the subject matter was however essential.

16. Members are asked to agree the following nominations to be put forward to DCLG:

Name	Authority	Political group
Cllr Maurice Heaster	LFEPA	Conservative
Cllr Rebecca Knox	Dorset FRA	Conservative
Cllr John Fuller	South Norfolk	Conservative*
Awaiting confirmation from the Labour group office	?	Labour
Awaiting confirmation from the Labour group office	?	Labour
Cllr Jeremy Hilton	Gloucestershire FRA	Liberal Democrat
Cllr Philip Howson	East Sussex FRA	Independent

\* Vice-Chair LGA Resources Portfolio and Vice-Chair LGPS Board Investment Committee

17. Political groups have drawn most nominations from existing FSMC membership. Where that is not the case we understand the person has considerable pensions experience.

#### **GAD v Milne Commutation Factors**

18. Following a Pensions Ombudsman determination against the Government Actuaries Department, we lobbied Treasury on the matter of financial costs. As a consequence fire authorities will not be held responsible for the payments to affected individuals. HM Treasury confirmed in their letter dated 24<sup>th</sup> July that DCLG would absorb the lump sum funding, and would make the required funding available to fire authorities.
19. The mechanics for receiving the funding will be agreed in due course.
20. GAD Guidance and calculators have now been produced enabling authorities to start preparing the necessary calculations. This will understandably take time, before making payment there will be a requirement first of all to write and explain the payment that will due and request payment information and the signing of a discharge form. Government have set their expectations that this stage should be done before Christmas, and the majority of payments to be made by the end of the financial year. Therefore LGA have issued a template letter for authorities to notify affected pensioners of the timescales.

#### **Special Membership of the Modified 2006 Scheme for Retained Firefighters**

21. Following the introduction of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, and subsequent Employment Tribunal claims by retained firefighters, the House of Lords judgement allowed those who were serving during the period 1 July 2000 to the date on which they elected to join the 2006 Scheme, to have special provisions which generally reflect the rules of the Firefighters' Pension Scheme 1992 ("FPS 1992").

22. Those who qualify for membership of the modified Scheme, must have made an election to join (which was extended by SI 2015/590) by no later than 30 September 2015.

## **NATIONAL JOINT COUNCIL FOR LOCAL AUTHORITY FIRE AND RESCUE SERVICES**

### **Pay, terms and conditions**

23. Members will recall that the NJC is committed to working 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.
24. Under that commitment substantial work has been undertaken which included the formation of a number of workstreams:
- i. Environmental challenges – e.g. flooding, inland water safety, snow, wild fires
  - ii. Emergency medical response – e.g. co-responding, falls, on-site trauma care, provision of community training, wider health agenda
  - iii. Multi agency emergency response – e.g. MTFA, joint working, any issues falling out of JESIP
  - iv. Youth and other social engagement work – e.g. arson reduction, working with risk of offending youth groups
  - v. Inspections and enforcement – e.g. schools, illegal homes, crown properties, expansion of unregulated business use, related fire safety advice

25. That first phase concluded on schedule and a summary was issued to FRAs shortly after the last NJC meeting:

<http://134.213.15.24/documents/10180/7025438/workforce+-+fire+and+rescue+services+joint+circulars++-+CIRCULAR+NJC+07-15+-+Pay+Terms++Conditions+Workstreams+5+June+2015.pdf/3dfe25ca-6f6f-4cbf-9a10-503e06f23bf3>

26. Members were pleased with the progress made and agreed that discussion should now move into the second phase, covering meshing together of the outcomes, and consideration of what it is appropriate to take forward at national level, local level or not at all. At that point consideration will also be given to the viability of any potential funding streams and whether they should be explored further.
27. Furthermore, NJC members agreed as part of that second phase work, that FRAs would be able to submit expressions of interest to the Joint Secretaries to carry out trials arising from the work of the Emergency Medical Response workstream which could focus on co-responding and/or wider work. Importantly the matter of the firefighter rolemap has been set aside in order to facilitate the trials and agreement reached that such work will be jointly regarded as part of the core job for the duration of the trial. Therefore an FRA does not need to rely upon volunteers in order to run a trial. NJC trials will need to conclude by

the end of June 2016. At the time of writing, seven trials have already been approved. Expressions of interest from a further five FRAs are under consideration and a further three FRAs have advised that they are in the process of finalising their proposals.

28. This work will fit well with collaborative work being discussed elsewhere as part of the public health agenda in England, and expectations in other parts of the UK that firefighters should undertake a wider community role.

### **Inclusive Fire Service Group**

29. The NJC has a continuing commitment to equality, diversity and cultural issues in the fire service. As part of that continuing commitment members decided at the last meeting of the NJC that given the employer/employee relationship, the NJC should take the lead on a piece of work to assess the current position and to identify guidance in relation to any further strategies that could be used at local level to further encourage improvement in equality, diversity and cultural issues.
30. The Chief Fire Officers Association, the Retained Firefighters Union and the Fire Officers Association have all now accepted invitations to participate in the group and the first meeting of the group will take place shortly.

### **Transitional pension scheme arrangements**

31. FRAs are aware that the FBU has indicated its intention to enter many thousands of Employment Tribunal cases in relation to the transitional pension scheme arrangements across the UK. We understand those claims have been lodged with the Tribunal service and should reach FRAs shortly. Whilst we have not at the time of writing had sight of the claims, in broad terms and based on the information received so far the claims are likely to assert:
  - younger workers are losing out, which amounts to direct discrimination that cannot be objectively justified; and
  - the workforce profile of the Fire & Rescue Authorities shows that female and BME workers tend to be younger, meaning that the arrangements amount to unjustified indirect sex and race discrimination, and possibly equal pay infringements in relation to female employees; and
  - fully protected members of the NFPS have been disadvantaged in comparison to their 2015 Scheme counterparts and taper protected members of the NFPS have also been similarly disadvantaged in relation to accrual of benefits, transfer rights between schemes for those with taper protection and benefits on partial retirement.
32. Given the good sense of not replicating matters many times over, and through the auspices of the National Employers, we offered to put in place a collective response to this matter. All UK FRAs welcomed that approach and have provided the LGA and Bevan

Brittan LLP with authority to act on their behalf. As part of this a Steering Committee has been set up including a number of FRA representatives.

33. A cost sharing arrangement has also been entered into although the matter of costs in defending these cases will be raised with respective government departments given FRAs ultimately did not have control over the decisions taken in putting these protection arrangements in place.

#### **Joint Working Group (Fitness)**

34. This group was formed following the agreement in principle within the NJC on a number of fitness issues. Reference to the group subsequently appeared in the addendum to the National Framework in England introduced by DCLG and related to its dispute with the FBU. CFOA, RFU, and FOA all accepted invitations to participate in the joint working group.
35. Whilst the joint working group is, by agreement, facilitated by Peter Holland (DCLG) it is nonetheless mindful of issues in Scotland, Wales and Northern Ireland given the joint involvement of the Employer and Employee Sides (including advisers) of the NJC which operates on a UK-wide basis.
36. The joint working group and its over-arching Steering Group (also with NJC/DCLG membership) have now met on two occasions.
37. Whilst a year has been identified in the terms of reference for the work of this group (from March 15), the current aspiration is that the best practice guide it is charged with developing will be issued by the end of this year.

#### **Part-Time Workers (Prevention of Less Favourable Treatment) Regulations**

38. Members will recall that settlement agreements were reached some time ago with both the RFU and the FBU in respect of the many thousands of Employment Tribunal cases relating to potential discrimination under the above Regulations. Paragraphs 21 and 22 above refer to the outcome of the pension aspect of the cases. This section of the report refers to the terms and conditions aspect of the cases.
39. Concluding application of the settlement agreements and ensuring that all eligible employees and ex-employees have received a settlement payment has been a very lengthy and complex process. However the independent data processor Popularis is now in the process of issuing the final batch of offers.

#### **Local assistance**

40. Conciliation - the Joint Secretariat has a very good record of assisting local parties to either reach agreement at the time of conciliation or to develop the basis of an agreement which leads to a resolution following further discussion shortly afterwards

at local level. Over the last year eleven conciliations have been undertaken (for nine fire and rescue services), covering a total of 26 issues.

41. Joint industrial relations training - when jointly requested to do so, the Joint Secretariat can also work with parties at local level who wish to explore their current industrial relations relationship with a view to seeking improvement. During this year this took place with three services.

**'Enabling closer working between the Emergency Services' - Consultation**

42. At the time of writing, the Government has just issued a consultation on a series of measures to transform the delivery of local fire and police services, and drive greater collaboration between the police, fire and rescue and NHS ambulance services.
43. Whilst many of the measures will be the subject of discussion elsewhere under today's agenda, e.g. governance issues, matters relating particularly to employment status will be of interest to the National Employers and no doubt the NJC.
44. The consultation sets out that should a Police and Crime Commissioner take on the responsibilities of their local fire and rescue authority, the Government intends to enable, where a local case is made, the Police and Crime Commissioner to also put in place a single employer under the governance of the Police and Crime Commissioner. Frontline police and fire services will continue to be separate.
45. The consultation states that, '*the National Joint Council has no statutory basis and it is for fire and rescue authorities to decide whether or not to remain members*' and '*the Government proposes that this same choice should remain open to Police and Crime Commissioners, who would need to approach the National Joint Council if they wished to become members*'.
46. Members of the National Employers will consider this consultation when they meet in October.

**Advisory Forum nominations for 2015/16**

47. FSCM members will be aware that the National Employers are advised by a group of 14 advisers drawn from fire services across the UK, specialising in strategic, legal, HR and finance areas. This is known as the Advisory Forum.
48. With effect from 1<sup>st</sup> October, there will be three vacancies on the Advisory Forum as a consequence of people leaving the fire service, not just the Forum. We endeavour to ensure a balance of each type of fire authority on the Forum and by coincidence, on this occasion, all three of these vacancies require replacements drawn from LGA metropolitan fire services in order to maintain that balance.

49. Following discussion with those metropolitan services, members are asked to approve the nominations of Phil Loach and Mike Griffiths in respect of the CFO strategic adviser and finance adviser vacancies.
50. Members are also asked to decide one nomination in respect of the Human Resources adviser vacancy. Further information is contained in Appendix A. Please note one of the people suggested is currently on annual leave and hence his formal expression of interest will follow shortly.
51. National Employer members will then consider the LGA nominations in deciding the formation of the Advisory Forum for the forthcoming year.

**APPENDIX A**

**POTENTIAL ADVISORY FORUM NOMINATIONS**

**Chief Fire Officer strategic adviser**

**Phil Loach – West Midlands Fire Service**

After discussing and agreeing the suitability of nomination with my Metropolitan Fire Service colleagues I would like to offer my expression of interest for your consideration.

Current Role: Chief Fire Officer, West Midlands Fire Service.

Appointed: November 2013

Previous Experience:

Various Fire Service Roles Jan 1994— Nov 2013  
Department of Social Security Aug 1990— Jan 1994

I also have an active role in engaging with a number of surrounding Fire Service's with diverse workforce profiles via regional arrangements, regularly discussing and advising on strategic arrangements for workforce planning and service delivery.

I have a solid track record of delivering Service Improvement through employee engagement frameworks at local and multi service level.

I would welcome the opportunity to expand this experience to a national level via the advisory post available.

**Human resources adviser**

**Dominic Johnson – London Fire Brigade**

In my current position I am the HR lead for industrial relations within the Brigade. I have extensive experience of collective bargaining, and have been involved in a range of national issues including that of HR Adviser to the national employers on the Grey Book disciplinary and grievance procedures following the 2002–04 dispute. I am currently a member of the LGA national steering committee set up to address the FBU legal challenge on the 2015 pension scheme transitional regulations. The role has involved extensive work with the NJC Joint Secretaries and ACAS.

As the Brigade negotiates locally for all its Control and FRS staff I am responsible for the development and implementation of the Brigade's approach to reward and recognition for these 900 staff. In the last five years I have put in place an entirely new performance-based pay and grading structure for our Control staff, have developed and introduced a raft of changes for our

Fire and Rescue staff including invest to save initiatives and flexible working arrangements, as well as conducting annual pay negotiations. Our new recruitment strategy looks set to deliver the highest proportion of BME recruits to the service and we would hope to achieve both in excess of 25% BME and 15% women – targets which may no longer formally exist, but are nevertheless key to service transformation.

I would welcome the opportunity to be one of the LGA HR Advisers to the Advisory Forum, and to play a larger national role in relation to employee and industrial relations issues within the fire service. I have a great deal of relevant very senior-level HR experience at both local and national level which I believe would be of benefit to the Advisory Forum given the major challenges facing the service as a whole in the coming period. I believe in particular that the experience of delivering change within a large and complex organisation and the experience of developing and implementing reward strategies locally will enable me to make a major contribution to the work of the Forum.

**Nick Mernock – Merseyside FRS**

This information will follow shortly.

**Finance adviser**

**Mike Griffiths – West Midlands Fire Service**

I have worked for West Midlands Fire and Rescue Authority for over 15 years and whilst my functional role has broadened over that time (from Finance, Payrolls and Pensions to also now include Procurement, Facilities Management and Transport Engineering & Workshops) I have held a position on the Senior Management Team throughout the entire period. As a result, I have developed a deep understanding of the Fire Service from an organisation-wide perspective in addition to my areas of functional responsibility.

Part of my role requires the regular production of reports and more particularly, ensuring the financial implications are appropriately reflected within all Senior Management Team and Fire Authority reports. Invariably this work involves good working relationships with Senior Officers and Councillors combined with the ability to ensure financial information is reflected in an appropriate and meaningful way.

I successfully completed a 'Masters in Business Administration' (MBA) degree earlier this year which provided me with a more up-to-date perspective on academic thinking to complement my practical experience. The learning has provided me with the ability to apply a more current, comprehensive business approach when considering Service related issues. In addition, studying for the MBA whilst undertaking a senior role demonstrated my level of commitment and self-motivation which would be valuable attributes to bring to the role I am expressing an interest in.

I have the full support of the Chief Fire Officer and Chair of the Fire Authority to express an interest in the vacant national role. They, like I do, appreciate the importance of the role and the positive aspects that the role would provide.

**FOR INFORMATION ONLY**

Existing and continuing national employer advisers:

Name	Type of adviser/FRA	Type of FRA
Ron Dobson (Chair)	CFO – operational/strategic	London - Met
Ann Millington	CO – operational/strategic	Kent - CFA
Simon Pilling	CFO – operational/strategic	W Yorks - CFA
Sean Ruth	CFO – operational/strategic	W Sussex - CC
Alasdair Hay	CO – operational/strategic	Scottish FRS
Simon Smith	CFO – operational/strategic	N Wales FRS
Vacancy	CFO – operational/strategic	Met
Vacancy	CFO – operational/strategic	Northern Ireland FRS
Vacancy	Finance	Met
Guy Goodman	Legal	Leics - CFA
Bob Warren	HR	Lancs - CFA
Karen Palframan	HR	Norfolk – CC
Diane Vincent	HR	Scottish FRS
Vacancy	HR	Met