

## **Industrial relations**

### **Purpose of the Report**

To update the Fire Service Management Committee on the current dispute between the Fire Brigades Union and Government Ministers in England, Wales and Scotland.

### **Summary**

This paper briefly describes the position as at the date of issue of the report. An oral update will also be provided at the meeting.

Members are asked to:

1. note the issues set out in the paper; and
2. discuss in particular **paragraphs 10 and 13**.

### **Action**

Officers will take any action as directed.

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### **Pension Scheme Reform Dispute**

1. The purpose of this paper is to update members on the current position in relation to the dispute between the Fire Brigades Union and Ministers in England, Wales and Scotland on the matter of pension scheme reform proposals.
2. Whilst this is a dispute between the FBU and Government, through the auspices of the National Employers<sup>1</sup>, we have taken whatever action possible to assist the parties to the dispute, where it is appropriate to do so. Most recently this has been on the matter of fitness and capability.

### **Fitness and capability**

3. This matter would fall out of the effect of the pension reform proposals given the potential impact on fitness issues and how they are managed at local level. This includes from the union's perspective an aspiration that uniformed employees aged between 55 and 60 who are unable to maintain fitness should be able to retire on a full (rather than an actuarial reduced) pension.
4. A number of draft principles were drawn up (**Appendix A**) and fire authorities were consulted upon the principles at a meeting held in London on 24 October. The meeting was very well attended. Only one English FRA and one Welsh FRA were unable to attend. The English FRA did however forward its comments in advance of the meeting.
5. As far as the wording of the principles was concerned, discussion at the meeting focussed on two main points. The first was use of the term 'in role' in respect of redeployment opportunities (principle 10), which may reduce the opportunities for staff to be offered redeployment. The second was the word 'commence' in principle 11. Members and Chief Fire Officers present understood that any agreement underpinning that terminology would be clear of its intent i.e. to commence the process of authority initiated early retirement to determine whether the FRA would wish to use its discretion to apply a full pension on a case by case basis. However, on balance it was felt that commencement of the process could be interpreted as misleading and raise expectation that a full pension would always be the outcome of such consideration. Negotiators were asked to be mindful of these points in continued discussion with the FBU.

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<sup>1</sup> The majority of National Employer seats are held by the LGA (10 of the 14 seats)

**Item 3**

6. Members also noted the inclusion of a periodic review under the auspices of the NJC (principle 5). It was recognised that this was a better position than the original DCLG suggestion that such a review be held under its auspices and with the appointment of an Independent Chair.
7. Discussion then covered:
  - 7.1. the matter of legal advice, including QC opinion, concerning application of the discretion in the Pension Regulations in a way that implied a blanket acceptance of payment of a full pension in the circumstances described in paragraph 3 above. In short, the advice was clear that such a position would effectively fetter an FRA's discretion whether agreed at national or local level and therefore be unlawful.
  - 7.2. the matter of potential costs to an FRA should the outcome of the dispute between the FBU and Government result in removal, or effective removal, of the FRA's discretion. Members and Chief Fire Officers were firmly of the view that such costs should be treated as a New Burden and as such approaches would have to be made to DCLG for the costs to be met by Government.
8. Since that meeting constructive discussion has continued with the FBU and an oral update will be provided at the meeting.
9. Separately to those discussions the Government in England decided on 1 November to issue a consultation paper based on the original proposals. The National Employers has indicated to FRAs that we will coordinate a shared response. It will also be helpful for an FRA to make its own response. A copy of the Employers' circular (EMP/13/13) which includes the consultation documents can be found here: <http://www.local.gov.uk/web/workforcelibrary/fire-and-rescue-services-employers-circulars>
10. Many members of the FSMC will have been present at the consultation meeting on 24 October and will have contributed to the debate on the principles relating to fitness and capability. Today's meeting provides a further opportunity to inform the debate about the nature of the National Employers' collective response to DCLG's consultation.

**Further industrial action**

11. The FBU has announced further strike action in England and Wales (excluding control staff), which will take place on 13 November between 10.00am and 2.00pm.

15 November 2013

**Item 3**

12. In addition to strike action, the FBU has also announced a second ballot of its members in connection with the trade dispute with Ministers. This ballot is seeking support for action short of a strike. This ballot will cover England, Wales and Scotland and this time will also include control staff. The ballot opens on 13 November and closes on 4 December.
13. Today's meeting will offer members an opportunity to share information on any local issues that arose during the strikes of 1 and 4 November and also 13 November (assuming that it takes place).

**Appendix A**

**National Employer consultation of fire authorities - Principles**

1. Firefighting is a physically demanding occupation and it is essential that firefighters have sufficient levels of fitness to enable them to carry out their tasks as safely and effectively as possible. As such, this requires higher levels of fitness than most other occupations and therefore the NJC role maps set out a specific requirement for operational personnel to maintain levels of personal fitness.
2. Fitness standards must reflect the occupational demands of firefighting and all parties have committed to working together through a joint working party on this issue.
3. A process of fitness assessment and development is required in each fire authority to ensure that operational personnel maintain a minimum standard of personal fitness in order to safely perform operational duties.
4. Fitness levels may decline with age and whilst this may be mitigated by fitness training, diet and other lifestyle changes it is acknowledged that there may be a general decline in fitness as a result of the ageing process. All operational personnel will be provided with support to maintain their levels of fitness for the duration of their career.
5. There will be a periodic review under the auspices of the NJC to ensure that appropriate fitness standards, training, testing, monitoring and management policies and procedures are in place in each fire authority working effectively to deliver the principles contained within this document.
6. Fire Authorities do not wish to put operational personnel in a situation where they face “no job, no pension” and no individual will automatically face dismissal if they do not achieve the minimum standard required.
7. Where operational personnel do not achieve the minimum agreed fitness standard consideration will be given to whether an individual is able to continue on full operational duties or should be stood down, taking into account the advice provided by the authority’s occupational health provider. In making this decision the safety and well-being of the individual will be the key issue.
8. Fire Authorities commit to providing a minimum of 6 months of development and support to enable individuals who do not achieve the minimum agreed standard to regain the necessary levels of fitness.

**Item 3**

9. Where underlying medical reasons are identified that restrict/prevent someone from achieving the necessary fitness then a referral will be made to occupational health and the individual will again receive the necessary support to facilitate a return to operational duties.
10. Where the medical condition does not allow a return to operational duties, Fire Authorities will fully explore opportunities for reasonable adjustments or redeployment within role. In those circumstances where there are no opportunities for reasonable adjustments or redeployment within role then the fire authority will commence an assessment for ill-health retirement through the IQMP process.
11. If no underlying medical issues are identified and following a programme of development and support it becomes apparent that an individual will be unable to regain the necessary levels of fitness, then a fire authority will fully explore opportunities for reasonable adjustments and/or redeployment within role. In those circumstances where there are no opportunities for reasonable adjustments or redeployment within role, a fire authority will commence the authority initiated early retirement process.