

20 September 2018

Workforce Update Report

Purpose of report

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

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 to proceed as directed.

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KEY WIDER WORKFORCE ISSUES

Broadening the role of the firefighter / Pay

1. The term 'broadening the role' refers to an National Joint Council (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, community engagement, inspection and enforcement and multi-agency emergency response (which includes Marauding Terrorist Firearms Attacks - MTFA).
2. Both sides of the NJC remain fully committed to identifying a mutually acceptable resolution and negotiations are therefore continuing with frequent meetings taking place to scope potential changes to roles and to explore how that could be reflected in terms of pay. Those negotiations remain constructive in nature.
3. A successful conclusion to the negotiation will be directly affected by available funding on a sustainable basis. Both sides of the NJC therefore also remain committed to political lobbying in that regard both separately and where appropriate jointly. Since the last meeting of the FSMC that lobbying has continued.
4. 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 a query around reserve levels. Meetings have taken place with civil servants separately and jointly as appropriate and that is continuing. We have emphasised the need to resolve the matter quickly.
5. The NJC is a UK-wide body and members will be interested to note that the Cabinet Secretary for Local Government and Public Services in Wales has, while expressing his view that any outcome must also work well for Wales, indicated that he is happy for further discussion to take place. Meetings are on-going with civil servants. In Scotland, a positive meeting has taken place with the new Minister. The Minister reaffirmed Scottish Government commitment at this time and reinforced a desire for a quick successful resolution to the negotiation. Work is also taking place considering the best approach to Northern Ireland given the unique political circumstances there.
6. Since the FSMC last met the employers' side of the NJC has held a number of update meetings with Chairs and Chief Fire Officers. The three meetings in the South West, Manchester and London took place over the end of June to mid-July.

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7. Discussion also covered any potential pay award while the wider negotiations continue. This matter had previously been considered within the employers' side when it met earlier in June and the employees' side advised that an employer position would be confirmed during July. Mindful of the position on the broadening the role negotiation and additional information in respect of affordability, settlements elsewhere, respective government 'policies', economic factors, the recommendation of the employers' Advisory Forum and wider discussion at the update meetings, the employers' secretary wrote to the employees' secretary to suggest that basic pay and continual professional development payments are uplifted by 2.0per cent with effect from 1 July 2018 while negotiations continue to put in place a longer term deal. The letter also indicated that from a National Employers' perspective any increase above that level would be dependent upon a successful conclusion to the broadening the role negotiation and securing additional funding from governments. Furthermore, as negotiations are continuing, the employers' expectation is that any overall settlement will also take into account this increase. The Fire Brigades Union decided to consult its members and we understand will consider its response to the employers at its Executive Council meeting taking place between 18-20 September.

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

8. This recent case concerns a 'volunteer' firefighter in Belgium. However its impact 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'.
9. Through the auspices of the National Employers we have been working with a QC to inform guidance to Fire and Rescue Authorities on the judgement.
10. As members are aware 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 were appropriate.
11. The Sounding Board has met with the QC to further explore the picture of how the retained duty system works in the UK. Arrangements are currently being made to provide demonstrations of the three main availability management systems used by Fire and Rescue Services.

Joint secretariat support

12. Aside from the formal NJC dispute resolutions processes, the Joint Secretariat can provide early informal assistance where a local matter is likely to prove difficult to resolve. In recent weeks the Joint Secretariat has this year supported a service in resolving a broad range of harmonisation issues. It was also involved in early conciliation

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with another service to help resolve a Trade Dispute and at the time of drafting this report constructive discussions are continuing.

13. In terms of formal processes the Joint Secretariat is currently working with three services on a wide range of issues.

PENSIONS

Valuation and Employer Contributions

14. On 6 September 2018, Her Majesty's Treasury (HMT) published their draft Directions for the 2016 valuation for comment. For the firefighter pension schemes in England this means:

14.1. The firefighter scheme in England is likely to breach the cost cap floor (i.e. costs are likely to be more than 2per cent lower than the 16.8per cent of pensionable earnings cost cap set out in the 2015 firefighter scheme regulations). Under paragraph 3 of rule [150A](#) of the scheme rules the Home Office must consult with the [Scheme Advisory Board](#) (SAB) on the action to be taken to bring the cost back within the target cost. If no agreement can be reached, the default mechanism is to amend the rate at which benefits accrue. The SAB is well placed to engage in this consultation. The boards [cost effectiveness committee](#) constructed from stakeholders across the sector and supported by the boards independent actuarial advisor will be meeting with Home Office and Government Actuary's Department (GAD) on 19 September to discuss the initial outcomes. A verbal update of that meeting will be given at the FSMC. For clarity the cost cap mechanism is a measure of costs for the reformed schemes only, i.e. the 2015 scheme. Therefore the steps taken to improve benefits will be for members in employment in the 2015 scheme between April 2019 and March 2023. It will not affect deferred or pensioner members, or protected members of the 1992 or 2006 schemes.

14.2. There will be a significant increase in employer contribution rates from their current levels. This is mainly due to the proposed further reduction in the SCAPE discount rate, from 2.8per cent to 2.4per cent. This further reduction, if confirmed, is expected to apply from 1 April 2019. The HMT position (as set out in the [technical annex](#)) is that additional costs for the Milne v GAD exercise should fall on employers will also contribute to the increase. This is disappointing, the SAB [response](#) to the consultation made clear the SAB position, that these costs should not fall on employers, and the SAB will be responding to HMT in that regard. As yet we do not know what the 'significant' increase is set to be, I expect to be in a position to give a verbal update to members on 20 September 2018.

15. This [technical bulletin](#) produced by GAD contains the links to all the relevant documents

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15.1. [The written ministerial statement \(WMS\)](#)

15.2. [Draft Directions](#)

15.3. [Technical Annex to Directions](#)

15.4. [The letter to TUC](#)

16. Board consultations and responses will be published [here](#) once they are available, and monthly updates will be provided in the [bulletins](#).

Scheme Advisory Board

17. The budget has now been submitted to the minister requesting a levy of £7.69 per active firefighter member. It is recognised that the proposed levy represents an increase from the levy set in 2017/2018 of £5.67, however this allows the SAB to provide increased centralised support and is designed to meet the cost effectiveness objective. The increase has been consulted on with the Fire Finance Network and is supported by Fire and Rescue Authorities.

18. During 2018/2019 the board are embarking on a project to benchmark the cost and effectiveness of administration and management of the Firefighters Pension Scheme. This is an essential project for the SAB as it will allow them to measure the cost effectiveness of the SAB budget by providing central support and allow the board to consider the future of administering the Firefighters' Pension Scheme and whether there are cost savings that can be made.

Tax implications of retrospective pensionable pay corrections

19. Members may recall from the January 2018 FSMC meeting an issue with regards to the correct taxable treatment of retrospective pension and lump sum payments as a result of correcting pensionable pay errors. Advice has now been sought through the SAB legal adviser, so there is no extra costs to authorities.

20. Pending the Firefighters technical meeting to be held on 17 September, a submission based on the legal advice will now be submitted to HMRC for clarification of tax treatment. Members should be mindful that a consequence of seeking advice from HMRC is that HMRC may investigate past tax treatment.

Scheme Regulations

21. The 2018 amendment order is expected to be laid during September, the amendments are relatively minor. The consultation and draft Statutory Instrument (SI) are available [here](#). Once the SI has been laid a note of the amendment order and any action expected by Fire and Rescue Authorities will be issued.

LGA Firefighter Pension Scheme Communications and Events

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22. The successful LGA Firefighters Pension conference now in it's fourth year will be held on 17 and 18 September. The conference continues to be very valuable to those involved in the management of Firefighter Pensions and continues to help Fire and Rescue Authorities discharge their legislative duties as scheme manager. Slides from the conference will be published [here](#).

Next steps

23. Officers will take forward comments from members, as directed.