

Workforce Report

Purpose of Report

To update the Fire Commission 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 take comments forward for future policy work.

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PENSIONS

Valuation and Employer Contributions

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

- 2.1. **The firefighter scheme in England is likely to breach the cost cap floor** (i.e. costs are likely to be more than 2 per cent lower than the 16.8 per 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](#) 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 advising the SAB on their response.

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.

- 2.2. **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 2.8 per cent to 2.4 per cent. This further reduction, if confirmed, is expected to apply from 1 April 2019. The HMT position (as set out in the [technical annex](#)) 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.
3. This [technical bulletin](#) produced by GAD contains the links to all the relevant documents

[The written ministerial statement \(WMS\)](#)
[Draft Directions](#)
[Technical Annex to Directions](#)
[The letter to TUC](#)

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

Scheme Advisory Board

5. 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 Authorities.
6. 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.

LGA Firefighter Pension Scheme Communications and Events

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

KEY WIDER WORKFORCE ISSUES

Broadening the role of the firefighter / Pay

8. 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 MTFA).
9. Both sides of the National Joint Council (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.
10. 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 across the UK in that regard both separately and where appropriate jointly. Since the last meeting that lobbying has continued.

11. 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.
12. 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 and a further meeting with the Minister scheduled. In Scotland, a positive meeting has taken place with the new Minister. The Minister reaffirmed Scottish Government commitment at this time but reinforced the need 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.
13. Since the Fire Commission last met the employers' side of the NJC held a number of update meetings with Chairs and CFOs. The three meetings in the South West, Manchester and London took place over the end of June to mid-July. The meetings were confidential in nature and will inform negotiations going forward.
14. Discussion at the meetings also covered any potential pay uplift 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 on behalf of the National Employers to suggest that basic pay and continual professional development payments be uplifted by 2.0 per cent with effect from 1 July 2018 while negotiations continue to put in place a longer term deal. The letter also indicated that 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 was that any overall settlement would also take into account this increase. The Fire Brigades Union decided to consult its members. The employees' side has since accepted the suggestion and FRAs/FRSs were advised accordingly.

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

15. This recent case concerned 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'.

16. Through the auspices of the National Employers we have been working with a QC to inform guidance to FRAs on the judgement.
17. 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 would be appropriate.
18. The Sounding Board has met with the QC to further explore the picture of how the retained duty system works in the UK. We also put in place a meeting to provide demonstrations of the three main availability management systems used by FRSs.
19. FRAs/FRSs will be further updated as soon as possible.

Court of Appeal – Pension Scheme Transitional Protection Arrangements

20. Members will recall that the Employment Tribunal found in favour of fire authorities. The FBU, who act on behalf of the claimants, lodged an appeal. The Employment Appeal Tribunal decided to join the appeal with that in the McCloud case relating to judges (which found in favour of the judges).
21. The EAT allowed the firefighters' appeals in certain respects. However, the EAT has not examined the evidence and found there was discrimination. The EAT's judgement simply means that, in its view, the ET was mistaken in the law in certain limited respects. However, in regard to those matters, the EAT recognised that there are grounds to appeal against its decision and the Respondents, including the FRAs, were given permission to appeal to the Court of Appeal. The reasons for allowing the firefighters' appeals in so far as the EAT did so, were very limited and the Respondents to the Claims, the Governmental bodies and the Fire and Rescue Authorities, succeeded on a significant number of points.
22. The appeal to the Court of Appeal is now scheduled for the 5th - 9th November 2018.
23. In addition to the above, the FRAs have a separate appeal based on Schedule 22 of the Equality Act 2010. At the initial stage the Employment Tribunal found against the fire authorities. The appeal is based on the belief that the FRAs have been very much stuck in the middle between the Governmental bodies and the FBU and the dispute between those bodies. The FRAs have done nothing other than seek to apply the law as determined by others. The EAT has ordered that this separate appeal should be stayed until the Court of Appeal has given its judgement.

12 October 2018

24. We continue to work closely with the Steering Group 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. While covered by the collective approach, the cases in Scotland, Wales and Northern Ireland are currently stayed pending the outcome of the English test cases. The Steering Group 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.

Secretariat support

25. Aside from the formal NJC dispute resolution processes, the Joint Secretariat can provide informal assistance where the local parties believe a matter is proving difficult to resolve. Most recently we have supported a service in resolving a broad range of harmonisation issues and the employers' secretariat has supported discussions which resolved a Trade Dispute.

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