

Workforce Report

Purpose

To update the FSMC 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.

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PENSIONS

Scheme Advisory Board (SAB)

1. Government have confirmed their intent to launch a series of technical discussions with the respective public sector scheme advisory boards in order to consider the Government proposals to respond to the McCloud and Sargeant legal proceedings (see *Pension Scheme Transitional Protection Arrangements Discrimination Cases* below). Government have confirmed they intend to extend the same treatment to all members of the public service pension schemes.
2. In order to respond to the technical discussion consultation, The Firefighters (England) Scheme Advisory Board will be forming a small working group of stakeholders drawn from SAB members, National Fire Chiefs Council (NFCC), Senior HR and Finance Officers, Administrators and Software suppliers.
3. This group will be mindful of the benchmarking report¹ commissioned by the SAB which found the cost² of administrating and managing the Firefighters Pension Scheme to be in the region of £5.3 million across England

	Total Cost
FRA Staff	£1,795,670.36
Administrators	£1,855,120.00
Software	£320,925.00
Special Projects	£1,091,169.00
FPS related activities	£269,379.78
Total	£5,332,264.14

Pension Scheme Governance

4. The Pensions Regulator (TPR) who has a statutory duty for regulatory oversight under the Public Service Pensions Act 2013³ for public sector pension schemes undertakes relationship supervision⁴ with trustees, managers and sponsoring employers. Last year they announced their intention to start supervision with the Firefighters Pension Scheme and selected four fire and rescue authorities (FRAs).
5. The four FRAs have now been selected, with two English FRAs and two devolved and have identified themselves to the Board as suggested by the Regulator. TPR attended the last meeting⁵ of the LPB effectiveness committee to discuss this work. The findings will be

¹ <http://www.fpsboard.org/images/PDF/Surveys/Aonreportfinal.pdf>

² As previously referenced in FSMC reports 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.

³ <http://www.legislation.gov.uk/ukpga/2013/25/schedule/4>

⁴ <https://www.thepensionsregulator.gov.uk/en/about-us/how-we-regulate-and-enforce/supervision>

⁵ <http://www.fpsboard.org/images/PDF/LPBsub/LPB-draft-minutes-141119.pdf>

anonymous and provided only to each FRA, but the secretariat will ask authorities for key points to be fed back.

6. Local Pension Boards and Scheme Managers should ensure they have utilised the LGA training offer⁶ for Scheme Manager and Pension Board Training.
7. A factsheet on the six key processes TPR use to measure public sector pension scheme performance was published in October 2019⁷

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

8. This case determined whether certain types of allowances were pensionable or not. A factsheet that gives the detail of the case can be found [here](#).
9. HMRC have recently confirmed a tax charge called scheme sanction charge, payable at 15 per cent is payable by the FRA where rectification payments are deemed unauthorised. Further guidance will be issued to FRAs on rectification of pensionable pay.
10. Whether the allowances were pensionable or not depend on a range of factors including the contract of employment and Fire Authorities should seek assurance there is appropriate governance in place to ensure pensionable pay decisions are made based on the regulations and on current case-law.

KEY CURRENT WIDER WORKFORCE ISSUES

Inclusive Fire Service Group

11. The Inclusive Fire Service Group (IFSG) is an NJC for Local Authority Fire and Rescue Services led group. Its membership however is wider and includes the National Employers, NFCC, the Fire Brigades Union (FBU), the Fire Officers Association (FOA) and the Fire and Rescue Services Association (FRSA). It is unique in that it comprises national employer and employee representation, senior management and trade unions. It considers matters such as equality, diversity, inclusion and cultural issues in the fire service with the aim of securing improvement.
12. It has undertaken extensive UK-wide research to identify a robust evidence base. This has included use of existing and newly commissioned data, surveys of FRSs and their employees, employee focus groups (female, BME and LGBT) and two types of workshops. The first involved FRS Equality and Diversity Officers (or leads) and local union representatives. The second involved Chief Fire Officers.
13. A number of improvement strategies were subsequently issued to services and authorities. More information can be found in circular [NJC/1/18](#). (The areas of weakness identified by the group bear a strong similarity to those more recently also identified by HMICFRS).

⁶ <http://www.fpsboard.org/index.php/local-pension-boards/training>

⁷ <http://www.fpsregs.org/images/admin/TPR-6-key-processes.v1.pdf>

14. The strategies were widely welcomed with virtually all services indicating their support including timescales within which they expected to see improvement. The IFSG resolved to monitor and measure use of the improvement strategies at a point when they should be embedded into each service.
15. Accordingly, the IFSG is currently undertaking a further survey of services and re-running focus groups and workshops, this time exploring the use and impact of the strategies and suggested ideas to improve. The outcomes will then be considered by the IFSG in developing next steps and will also be useful for complementary work taking place elsewhere such as that of the NFCC.

Pension Scheme Transitional Protection Arrangements Discrimination Cases

16. These cases concern the issue of whether the transitional protections in the 2015 Fire Pension Scheme (FPS), which provide protections based on age allowing older members to remain in their former final salary scheme, are age discriminatory (other claims were made but it is the age discrimination claim which is the primary one).
17. As they were named as respondents in the case, Fire and Rescue Authorities (FRAs) had to submit a defence to the legal challenge. This defence has been managed collectively on behalf of the FRAs by the LGA under the auspices of the National Employers and decisions have been taken by a central steering group which is comprised of a number of 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
18. The Court of Appeal found that the transitional protections unlawfully discriminated on age and the case has now returned to the Employment Tribunal for it to determine remedy. Members will be aware that in common with its approach to a request from Government, the Supreme Court rejected the fire authorities' application to appeal.
19. A case management preliminary hearing was held on 18th December 2019. An interim Order was agreed by all parties. The Order does not bind the parties beyond the limited interim period before the final declaration.
20. Paragraph 2 of the Order in effect provides that pending the final determination of all of the remedy issues, those that brought claims in England and Wales (the claimants) are entitled to be treated as if they remained in the in 1992 FPS.
21. The Order anticipates that the final determination on the remedy issue in regards to membership of the 1992 FPS should be resolved around mid-July 2020, although it should be noted that even when we have a final determination on that issue it may be some time before this part of the remedy can be put into effect for all claimants. Further there may be other issues relating to remedies to be resolved, for example in regards to claims for injury

to feelings. It should also be noted that the Order does not cover those who did not bring claims (non-claimants). However, discussions are taking place on how to provide a remedy for those non-claimants as appropriate. It is also anticipated that in due course remedy will also be put in place in Scotland and Northern Ireland.

22. The timetable and further information is contained in circular [EMP/8/19](#).

23. 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. It is anticipated that the appeal will be listed for hearing this year.

Defence of new category of claims

24. We understand that a new but related category of employment tribunal claims has or will soon be issued by the Fire Brigades Union against fire and rescue authorities on behalf of firefighters. In short, the claims relate to members of the 2006 Scheme who were not transferred to the 2015 Scheme (and never will be), which they claim would have provided them with better benefits.

25. We have approached FRAs to seek their views on whether they would like the LGA, along with the Steering Committee made up of representatives from fire authorities, to coordinate the defence of the new claims on their behalf, as we have done for the original claims. In terms of costs, they would be apportioned between authorities on a cost-sharing basis, based on headcount, as they are for the original claims.

HMICFRS – State of Fire and Rescue report (2019)

26. This report, published 15 January 2020, contains recommendations and views on a number of areas including those with direct workforce implications. Accordingly it will be of interest to both FSMC and the National Employers, albeit the HMICFRS remit covers England only.

Implications for Wales.

27. References to the scheme advisory board are for the English scheme advisory board only. Wales has its own advisory board who will be responding separately to the government consultation on reform.
28. TPR's remit extends to devolved countries, it is not known which of the three devolved countries has been selected for supervision.
29. Pensionable pay issues have the same implications for Wales as for England and FRAs will be advised as appropriate.
30. Where relevant, 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.