

Workforce Report

Purpose of Report

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.

Action

Officers are asked to note member comments.

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PENSIONS

Scheme Advisory Board (SAB)

1. HMT have now issued their informal early stage proposals to remedy age discrimination in the public sector pension schemes. Initial proposals are to return members to their former final salary scheme for the 'remedy period', but to offer a choice to the member, including those who were deemed protected in the final salary scheme, to receive benefits based on the current Career Average Revalued Earnings (CARE) scheme if it is better to do so, this is known as an underpin. It is important to caveat that these proposals may change on the receipt of legal advice on tax issues.
2. At this stage it is not clear on when the end of the 'remedy period' is, however it is expected to not be before 2022, the current working assumption is that it will take three years to bring in these proposals.
3. The proposals consult on two options for the choice to receive benefits as final salary or CARE for the remedy period to be made, this could 1) be at the end of the remedy period (this will be the same time right across public sector) or 2) at the member's retirement age.
4. There are complex issues to work through with either option, as such there are several unanswered items including what the actuarial assessment of employer contributions would be with either option.
5. There has been no sight on what the schemes would look like after the remedy period.
6. Technical discussions to inform the SAB response to these proposals concluded at the end of February. A series of three meetings took place between a working group of stakeholders including FSMC representatives, NFCC representatives, senior Fire and Rescue officers, administrators and software providers. The Board are expected to finalise a response at their meeting in March.
7. A formal consultation from HMT proposals is expected in the spring. FSMC may want to consider whether they wish to respond to this separately from the SAB response.

KEY CURRENT WIDER WORKFORCE ISSUES

Inclusive Fire Service Group

8. 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, FBU, FOA and the 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 including bullying and harassment in the fire service with the aim of securing improvement.
9. Upon its inception it undertook a detailed assessment of the current positions in the fire service. A number of improvement strategies were subsequently issued. More information

can be found in circular [NJC/1/18](#). (The areas of weakness identified by the group bore a strong similarity to those more recently also identified by HMICFRS in England).

10. The strategies were widely welcomed with virtually all services indicating their support and providing, as requested, 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.
11. Accordingly, the IFSG is currently undertaking a monitoring exercise, which has included:
 - 11.1 **Online survey of FRAs** - to which all 49 services responded, to understand the extent of use and impact of the improvement strategies.
 - 11.2 **Employee focus groups** - the LGA's Research team was commissioned to independently run a series of focus groups to capture the experiences of employees (who identified as at least one of the following protected characteristic groups: BAME, LGBT and Female) on a range of equality, diversity and cultural issues and views going forward. Similar focus groups were commissioned by the IFSG in 2017 so findings from both years will provide a useful comparison.
 - 11.3 **Workshops** - The NJC joint secretariat held workshops with FRS equality and diversity officers and local union representatives to capture their experiences, comparisons and views going forward.
12. The outcomes will now 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 and LGA.

HMICFRS – State of Fire and Rescue report (2019)

13. On the 15th January 2020 Her Majesty's Chief Inspector of Fire & Rescue Services' in England (HMICFRS) published a report to the Secretary of State under section 28B of the Fire and Rescue Services Act 2004. It contained his assessment of the sector in England, based on the inspections carried out between June 2018 and August 2019. A copy of the full report can be found [here](#).
14. The LGA Workforce team will be working with members to analyse the recommendations to inform consideration going forward with particular reference to those recommendations that relate to collective bargaining and employee relations.
15. From an NJC for Local Authority Fire and Rescue Services perspective, a similar process will occur. However, although the report is related to fire and rescue services in England, there is the potential for its recommendations relating to the work of the NJC to impact upon Scotland, Wales and Northern Ireland. As such it is of interest to members of the NJC from across the UK. It is acknowledged that the view of each side of the NJC may be closer on some issues raised than on others. However, in the immediacy, the NJC agreed the

following statement in respect of the second recommendation¹ and in particular the absence of the NJC itself in the organisations it is suggested consider its future:

'The NJC has noted the recommendations and views of HMICFRS in relation to the setting of pay and the 'grey book' in England. The NJC, comprising employer representatives and the recognised trade unions, is the negotiating body responsible for collective bargaining in the sector across the UK. We are surprised and concerned not to be included in the suggested list of participants considering reform. We believe our engagement is key to meaningful discussion.'

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's 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 18 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

¹ 'By June 2020, the Home Office, the Local Government Association, the National Fire Chiefs Council and trade unions should consider whether the current pay negotiation machinery requires fundamental reform. If so, this should include the need for an independent pay review body and the future of the 'grey book'.'

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. Furthermore, 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.

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.

24. Since the outset, the position of FRAs that any costs arising from these cases should be met by governments has been made clear. Work continues with legal representatives on appropriate approaches to reinforce that position.

Defence of new category of claims

25. 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.

26. We have approached FRAs to seek their views on whether they would like the LGA, along with the Steering Committee to coordinate the defence of the new claims on their behalf, as we have done for the original claims. This would be on a cost-sharing basis, based on headcount, as they are for the original claims. The overwhelming majority of respondents to date are in favour and we therefore expect to take this forward.

Fit for the Future

27. Members will recall consideration at the last FSMC meeting of a piece of work undertaken in partnership between the National Employers (England) and the National Fire Chiefs Council (NFCC) - *Fit for the Future*. This work would effectively build upon elements of both broadening the role and the Community Risk Programme approach the NFCC is developing, which has also been the subject of previous FSMC discussion. Members endorsed the direction of travel and agreed that the LGA would become the third partner in this work alongside National Employers (England) and the NFCC.

28. Members were advised that LGA representatives on the employers' side of the NJC for Local Authority Fire and Rescue Services would be asked to consider similar formal support when it next met. At the employers' side meeting on 26th February that position was agreed.

Scottish, Welsh and Northern Ireland representatives were also fully sighted on this work and recognised that this decision would not preclude the employers' side deciding to take such an approach nationally in the future if the outcome of developments in Scotland, Wales and Northern Ireland on a wider role suggested that would be appropriate. Neither did it preclude the NJC from facilitating separate deals in Scotland, Wales and Northern Ireland (at the time of writing this report an offer in Scotland is the subject of an FBU consultative ballot of its members).

Pay 2020

29. Members will be aware that the national *Broadening the Role* negotiation is currently paused to allow both parties time to take stock. From an employer perspective a major factor has been the need for additional government funding in England, Scotland, Wales and Northern Ireland and that has had implications for the negotiation as such funding is outside of the control of the NJC itself.
30. Nonetheless while such discussions have been taking place an annual pay award has continued to be applied by agreement. The 'usual' settlement date is 1 July and discussions will be taking place between now and then on an appropriate way forward this year should the status quo prevail or if there are significant other developments. Employer members remain mindful of the affordability position discussed with Chairs and CFOs in previous consultation exercises.

Coronavirus

31. The National Joint Council for Local Authority Fire and Rescue Services has issued a [circular](#) in respect of Novel Coronavirus (COVID-19) which provides sources of further information across the UK and confirms pay arrangements should an employee be required to self-isolate or be placed in quarantine.

Implications for Wales

32. 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.
33. 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.