

## **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.

<b>Contact officer:</b>	Gill Gittins (industrial relations)	Clair Alcock (pensions)
<b>Position:</b>	Senior Adviser (Workforce and Negotiations)	Senior Fire Pensions Adviser
<b>Phone no:</b>	020 7187 7335	020 7664 3189
<b>E-mail:</b>	<a href="mailto:gill.gittins@local.gov.uk">gill.gittins@local.gov.uk</a>	<a href="mailto:clair.alcock@local.gov.uk">clair.alcock@local.gov.uk</a>

## **PENSIONS**

### *Scheme Advisory Board (the Board)*

1. In January HMT 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.
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 on when the member might make the choice, this could be:
  - 3.1 At the end of the remedy period, this will be the same time right across public sector, or
  - 3.2 At the members 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, and therefore no opportunity to assess possible cost to employers.
6. The Board issued their non-binding comments to HMT in April 2020. In order to consider the proposals, the Board formed a working group which consisted of SAB employee and employer representatives, senior officer representatives of FRAs including NFCC, HR and Finance Directors, administrators of the scheme, the software suppliers and the Board advisers.
7. The Board identified that limiting risk was the boards strongest priority in its approach to considering the two options, and in that regard the only proposal to mitigate risk of further legal challenge was for the member to make the choice at retirement.
8. However, the likely administrative and cost implications of such a long-term remedy is challenging and potentially places a burden on employers for a longer period. Therefore, although the Board was largely in favour of deferred choice, they did not provide a definitive view.
9. The Board commented on the financial burdens that would fall on employers to manage and administrate either proposal, and called on the Government to meet those FRA costs in full.

10. A formal consultation from HMT proposals is expected in 'late' spring, where it is expected further details will be known.

*COVID-19 and the FPS*

11. In order to provide guidance and respond quickly to pension queries arising from Covid-19 we developed the [COVID-19](#) page on the [website](#).
12. Issues of particular note have been provided below

**Compensation Scheme**

13. The Firefighters' Compensation Scheme 2006 provides additional benefits for those who are eligible in the event of death or injury in the exercise of duties as a Firefighter, known as a qualifying injury.
14. If eligible for a survivors pension these are only paid to a spouse or civil partner, unmarried partners are not eligible for a survivors pension.
15. The Firefighter Pension Schemes (FPS 1992, FPS 2006 & FPS 2015) provide a death in service lump sum for members of the scheme.
16. The compensation scheme is not funded by HMT, this scheme is funded directly from the Fire Authorities operating account. This is different to the pension schemes for which Fire Authorities receive a pension grant from government.
17. In order to determine whether the death or disablement should be considered a qualifying injury, the Fire Authority should obtain the written opinion of an independent qualified medical practitioner. This should be done on a case by case basis, and a blanket approach is inappropriate.
18. It is recognised that determining whether a COVID-19 related death or injury would be a qualifying injury might be challenging, and LGA has been in discussion with Home Office pensions team, who have advised that the matter is under Treasury consideration in order to provide central guidance.
19. Our [Frequently Asked Questions](#) have been revised to reflect the current position and will be updated as further information become available. Guides on the [injury scheme rules](#) and [survivor benefits](#) are available on our [website](#).
20. In summary, the Firefighters' Compensation Scheme is:
  - 20.1 Available for eligible Firefighters only
  - 20.2 Paid for by employers
  - 20.3 Pays a survivors pension to married or civil partners only

21. Members may be aware that the Secretary of State for Health and Social Care intends to establish a government funded special short-term life assurance scheme<sup>1</sup> that would provide a lump sum of £60,000 to families of NHS and Social Care workers who contract COVID-19 as a result of being frontline workers and die.

### **Re-employment of retired firefighters to provide additional resilience during the coronavirus crisis**

22. In order to achieve a position akin to NHS to allow staff to return to work without it impacting on their pensions, there are two separate issues for the Firefighters scheme that need to be considered.

#### Protected Pension Age

23. The impact of the Finance Act 2004 on retired Firefighters from **FPS 1992 only** with a protected pension age (retired from the FPS 1992 before the age of 55) and who are subsequently re-employed. Further information can be found in the [protected pension age factsheet](#)
24. We can confirm HMT has agreed that the temporary relaxation of the tax rules as detailed in the written statement [HCWS196](#) and the HMRC guidance in their [April 2020 newsletter](#) applies across the public sector and does include fire and rescue **if people are returning to roles as a result of Covid-19.**

#### Abatement

25. Abatement is stopping or reducing a member's pension if that member is re-employed by any Fire and Rescue Authority in any capacity after retiring and the value of their pension plus new salary is greater than the members salary at retirement. More information on abatement can be found in the [abatement factsheet](#).
26. FPS 1992 and FPS 2006 pension scheme rules allow for a Fire Authority to make a discretionary decision not to abate a pension. However, where that decision is taken the rules require the Fire Authority to pay into the notional pension fund an amount that would be equal to the pension that should be abated.
27. No decision has been made by HMT on an ability to waive the requirement for the FRS to pay into the notional pension fund if they exercised their discretion not to abate for a Firefighter returning to provide resilience with the coronavirus.
28. LGA is exploring with NFCC Finance Committee and Home Office colleagues the potential for a business case to be made to HMT in order for FRAs to be funded should they make this discretionary decision in the case of returning Firefighters as a result of Covid-19.
29. In the meantime, there is still a requirement to fund a decision not to abate.

---

<sup>1</sup> <https://www.gov.uk/government/news/new-guarantee-on-death-in-service-benefits-for-frontline-health-and-care-staff-during-pandemic>

### **Eligibility to the pension scheme and compensation scheme when using temporary contracts**

30. We have recently received legal advice that confirms temporary contracts are not eligible for the pension schemes or the compensation scheme and that temporary payments are unlikely to be pensionable.
31. Fire and Rescue Authorities might use contracts that could be deemed as temporary in situations as below;
  - 31.1 In order to quickly contract Firefighters to provide additional resilience during a crisis such as a Pandemic that we are currently experiencing.
  - 31.2 In order to reduce the likelihood of abatement applying when re-employing retired firefighters, some Fire and Rescue Authorities may use contracts that could be deemed as temporary such as zero-hour in order to lower the salary, so that the salary plus pension is not higher than the salary before retirement
32. Contracts or arrangements such as zero-hour, short-term or fixed term contracts could be deemed as temporary,
33. The regulations do not provide guidance on what is meant by temporary within the context of the pension rules.
34. We have approached Home Office on this matter who have said

“With regards to the use of temporary contracts as an approach to re-employing retired firefighters, the Home Office does not have any remit with regards to how the fire sector employ their staff, nor the type of contracts they use. There is no Home Office owned legislation covering FRS workforce policy.

To conclude, it will be for each employing FRS to consider their own workforce strategy and to full consider the potential implications (to include the impact on pensions and compensation cover) and to defend that strategy if challenged.”
35. It is our view that without guidance on what is meant by temporary within the context of pension rules, obtaining further legal advice will not alter the certainty on arrangements for FRAs.
36. Any arrangement that could be considered temporary is not pensionable or eligible for the compensation scheme and Fire Authorities should ensure Firefighters are aware of that when contracted.
37. It is therefore for each FRA to satisfy themselves that the contract would not fall into the category of employment that “is not temporary”.

## **Pension Scheme Operational Resilience**

38. An [email](#) was sent to all scheme managers and administrators on 25 March requesting completion of the [online survey](#) in order to understand the impact of Covid-19 on the operational resilience of the scheme to ensure pensioners could still receive payments and retirements and death benefits processed without delay.
39. We were pleased to receive a good response to the survey with over 85% of services responding and confirming that overall there is very good resilience in place, demonstrating that the scheme is well placed to maintain payments and calculations.

## **KEY WIDER WORKFORCE ISSUES**

### **Inclusive Fire Service Group**

40. 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.
41. 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).
42. 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.
43. Accordingly, the IFSG is currently undertaking a monitoring exercise, which has included:
  - 43.1 **Online survey of FRAs** - to which all 49 services responded, to understand the extent of use and impact of the improvement strategies.
  - 43.2 **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.
  - 43.3 **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.

44. 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)***

45. 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](#).
46. The LGA Workforce team is 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. The Covid-19 situation has impacted upon resources available to undertake this work by June 2020.
47. 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 recommendation<sup>2</sup> 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***

48. 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).

---

<sup>2</sup> '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'.'

15 May 2020

49. 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.
50. 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.
51. A case management preliminary hearing was held on 18 December 2019. An interim Order was agreed by all parties and the detail is contained in circular [EMP/8/19](#). The Order does not bind the parties beyond the limited interim period before the final declaration.
52. 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.
53. The Order anticipated that the final determination on the remedy issue in regards to membership of the 1992 FPS should be resolved around mid-July 2020, although that is expected to be affected by what the position is on the FRA's Schedule 22 appeal (see paragraph 53 below). 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. 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.
54. 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.
55. 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 categories of claims***

56. 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.
57. 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 were in favour and we therefore expect to take this forward.
58. Furthermore, and very recently, another new but related category of employment tribunal case is emerging. These have been issued by Slater and Gordon solicitors against fire and rescue authorities on behalf of firefighters. We understand Slater and Gordon is working with the Fire Officers Association. In short, the claims are of the same type as the main claims brought by the FBU on behalf of their members in that they allege that the transfer to the 2015 pension scheme amounts to age discrimination. We anticipate the claims have been brought in order to protect these particular claimants' position in relation to any injury to feelings award.
59. We are currently in the process of seeking FRAs 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 these new claims on their behalf, as we have done for the original claims.

### **Fit for the Future**

60. Members will recall receiving updates on the development of an agreed improvement narrative, *Fit for the Future*, which includes improvement objectives that will give a national sense of direction to the future of Fire and Rescue Services in England.
61. The NFCC and the National Employers (England) working in partnership have developed the narrative and objectives based on analysis of the evidence available from a wide variety of sources, including the recommendations of the Grenfell Tower Inquiry (GTI) and the outcomes of inspection by Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS). This evidence has been brought together, analysed to identify themes and has led to the development of the improvement objectives within the document. This analysis will be ongoing as more evidence becomes available, e.g. learning from the Covid-19 pandemic, and the objectives may develop over time. The work should be regarded as a system that reflects the current position, based on current evidence.
62. LGA representatives on the employers' side of the NJC for Local Authority Fire and Rescue Services, referred to in the document as National Employers (England), have endorsed the

15 May 2020

direction of travel and are content to continue to work in partnership with the NFCC on this matter. The LGA's Fire Service Management Committee has also endorsed the direction of travel and resolved that the LGA be directly included and support the Fit for the Future approach going forward, becoming the third partner alongside National Employers (England) and the NFCC.

63. Consultation on a draft document will be made available on line, which is expected to commence this month.
64. Discussions between employer and trade union representatives, undertaken by the National Employers (England), will also begin as the outcomes of such work will also be relevant to them.
65. In addition, the work can also inform formulation of any business case to government on pay funding.

### **Pay 2020**

66. Members will be aware that the national *Broadening the Role* negotiation is currently paused to allow both parties 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.
67. 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 are taking place between now and then on an appropriate way forward this year. Employer members remain mindful of the affordability position discussed with Chairs and CFOs in previous consultation exercises.
68. Council employees have recently been offered an improved pay increase of 2.75 per cent from 1 April 2020, plus an additional one day's leave which would increase the minimum entitlement from 21 to 22 days per year (plus public holidays). While no formal response has been received, unions have expressed their strong disappointment with the offer.
69. Clearly the current Covid-19 situation will impact upon these fire service negotiations both in terms of employee expectations and potentially timescale.

### **Coronavirus**

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

71. Members will also be aware that both sides of the National Joint Council and the NFCC have developed a series of [tripartite statements](#) on additional areas of work that firefighters can undertake to alleviate pressure on ambulance services and other partners during the COVID-19 pandemic.
72. Since agreement on the principles document on 26<sup>th</sup> March a number of additional work areas have been identified:
- ambulance driving and patient/ambulance personnel support
  - delivery of essential items to vulnerable persons
  - movement of bodies (Covid-19)
  - face fitting for masks to be used by frontline NHS and clinical care staff working with COVID-19 patients;
  - delivery of PPE and other medical supplies to NHS and care facilities;
  - assisting in taking samples for Covid-19 antigen testing;
  - driving ambulance transport not on blue lights (excluding known Covid-19 patients) to outpatients appointments or to receive urgent care;
  - driving instruction by FRS driver trainers to deliver training for non-Service personnel to drive ambulances (not on blue lights)
  - assembly of single use face shields for the NHS and care work front line staff;
  - packing/repacking food supplies for Vulnerable people;
  - Known or suspected Covid-19 patients: transfer to and from Nightingale hospitals under emergency response (blue light) or through non-emergency patient transfer (not on blue lights)
  - Non Covid-19 patients: transfer to and from Nightingale hospitals under emergency response (blue light) or through non-emergency patient transfer (not on blue lights) – this includes recovering and recuperating patients no longer infected with Covid-19.
73. Where an employee chooses to volunteer to facilitate such work, the NJC for Local Authority Fire and Rescue Services has agreed such work will be regarded as part of the core job. This ensures there are no potential pension/compensation complications, which encompasses all Grey Book employees undertaking such work.

### **Implications for Wales**

74. 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.

15 May 2020

75. 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.