

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 are asked to note member comments

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PENSIONS

Age Discrimination Remedy

1. We are continuing to work closely and at pace across the whole of the FPS sector and with government departments to support FRAs through the remedy implementation process.
2. National conversations are being had with software suppliers and administrators about the necessary developments and data tools have been supplied to FRAs.
3. Resources for this implementation process, including [project plans](#), [risk registers](#) and [data guidance](#), can be found on the [implementation page](#) of the Age Discrimination Remedy page.

Scheme Advisory Board

Website

4. Sponsored by the scheme advisory board, the first national Firefighter pension website www.fpsmember.org went live on 20 May 2021.
5. The aim of the site is to provide a central resource for firefighters to find out about their pension scheme and the benefits and options that are available. This ensures that every firefighter in the country has access to the same level of information, regardless of where they work or what their role is, and make sure that members and their dependents are not relying on colleagues or social media for information or decision-making that may impact their future benefits.
6. The site is based on the scheme rules and so only provides facts, rather than opinion and speculation. This provides members with the tools and knowledge to be informed about the scheme and what any future changes will mean for them.
7. The event on 20 May 2021 will also launch a detailed survey to understand the preparedness of Fire and Rescue Services to implement the age discrimination remedy.

Remedy self-assessment survey launched

8. As part of their statutory role to provide advice to scheme managers and Local Pension Boards in relation to the efficient and effective administration and management of the Firefighters' Pension Scheme, the Board are looking to understand more about arrangements for managing the pension scheme and specifically for implementing the age discrimination remedy.

9. As such, they prepared a self-assessment survey to take a temperature check of current arrangements. The survey should only be completed once per Fire and Rescue Authority and we would expect this to be completed by the delegated [scheme manager](#) or an appropriate representative of the delegated scheme manager. It should not be completed by scheme administrators.

SAB letter to HMT

10. The SAB has written an [open letter to HMT](#) about the specific policy issues listed below that will affect the application of the Firefighters' Pension Scheme (FPS).
 - 10.1. How to adjust contribution amendments for members of the FPS 2006
 - 10.2. Taper members who have passed their 30-year service date
 - 10.3. Contingent decisions
11. The Board notes the publication of the Government response to the consultation confirming the decision to introduce retrospective remedy via Deferred Choice Underpin (DCU), and the decision to allow for implementation by October 2023, giving more time to bring in the significant processes that will be needed to implement DCU.
12. The Board's [response to the consultation](#) dated 9 October gave their fuller views on the wider issues with regard to age discrimination.

Immediate Detriment Guidance

13. [Immediate detriment guidance](#), was issued from Home Office at the request of the Fire Brigades Union directly to Fire and Rescue Services (FRSs) via the finance leads on 21 August 2020. This guidance was labelled as informal guidance only.
14. Subsequently, the LGA published an [immediate detriment information note for FRAs](#) which gave further clarification of the technical issues yet to be commented on by Home Office or HMT and the issues that would need to be decided by FRAs in their decision making on making any immediate detriment payments.
15. Further guidance from HMT via Home Office is expected shortly, and LGA officers have had opportunity to review the guidance, and consider with legal advice, it is expected that on distribution of the revised HMT guidance, the information note will be further revised.
16. Following the decision of the EAT on the FRAs schedule 22 appeal as discussed in paragraph 50 below, the courts determined that FRAs had the powers under section 61 and 62 of the Equality Act to not act discriminately. Nevertheless, as directed by Home Office in [Q10 of the Home Office FAQs](#) the legislation that allows schemes to do this is limited in effect which does not allow for all consequential matters to be

dealt with satisfactorily in all cases. For example, in cases where there are interactions with the tax system, perhaps where members have incurred or will incur tax charges or where contributions differ between the schemes.

17. As noted below, work is taking place in the context of wider immediate detriment issues for FRAs.

KEY CURRENT WIDER WORKFORCE ISSUES

Pay 2021

18. The Government announced in November, as part of the Spending Review, its approach to pay in 2021 for public sector employees for whom it has responsibility.

“In order to ensure fairness between the public and private sectors and protect public sector jobs and investment in services as Covid-19 continues to impact the public finances, the government will temporarily pause headline pay awards for some workforces. Pay rises for over 1 million NHS workers and the lowest paid¹ will continue despite the challenging economic context.”

19. The announcement does not have direct effect on fire and rescue service employees that fall within the scope of the NJC for Local Authority Fire and Rescue Services (Grey Book), NJC for Brigade Managers (Gold Book) and NJC for Local Government Services (Green Book) all of whom have their own national collective bargaining arrangements in respect of pay awards. Therefore, while a factor in pay considerations it is not the case that the same approach automatically applies.

NJC for Local Government Services (Green Book)

20. The NJC for Local Government Services (usual settlement date 1 April) received the claim below in February. Employee representatives on that NJC are Unison, Unite and GMB. Support staff in fire and rescue services tend to be employed on Green Book terms and conditions. Its scope is England, Wales and Northern Ireland.

- 20.1 A substantial increase with a minimum of 10% on all spinal column points
- 20.2 Introduction of a homeworking allowance for all staff who are working from home
- 20.3 A national minimum agreement on homeworking policies for all councils
- 20.4 A reduction of the working week to 35 hours with no loss of pay, and a reduction to 34 hours a week in London. Part-time staff to be given a choice of a pro rata

¹ earning less than £24,000 who will receive a minimum £250 increase

- reduction, or retaining the same hours and being paid a higher percentage of FTE
- 20.5 A minimum of 25 days annual leave, plus public holidays and statutory days, for all starting employees, plus an extra day holiday on all other holiday rates that depend on service
 - 20.6 An agreement on a best practice national programme of mental health support for all local authorities and school staff
 - 20.7 A joint review of job descriptions, routes for career developments and pay banding for school support staff, and completion of the outstanding work of the joint term-time only review group
 - 20.8 A joint review of the provisions in the Green Book for maternity / paternity / shared parental / adoption leave
21. A formal offer was made to the trade unions on 14 May, the pay element of which is for a 1.5 per cent increase to all pay points. Other matters included completion of the outstanding work of the joint Term-Time Only review group and immediate exploratory discussions on three other elements of the claim, as follows:
 - 21.1 A national minimum agreement on homeworking policies for all councils
 - 21.2 An agreement on a best practice national programme of mental health support for all local authorities and school staff
 - 21.3 A joint review of the provisions in the Green Book for maternity / paternity / shared parental / adoption leave
 22. The current position is that the offer has been rejected by the unions, who are seeking further talks. The employers are considering the response.

NJC for Local Authority Fire and Rescue Services (Grey Book)

23. At the end of April, we received a claim from the employees' side of the UK-wide NJC for Local Authority Fire and Rescue Services (its remit covers firefighters to area managers inclusive) which refers to:
 - '1. Pay increase: Using CPI as the measure of inflation a competent firefighter needs an increase of more than £4,000 to restore real wages lost over more than a decade of austerity. Therefore, a settlement for 2021 should urgently begin to address this through an immediate and significant pay rise as well as by setting out a roadmap for further significant improvements in pay.
 2. Pay progression: We have set out our concerns about the impact of the current flat pay structure on our members. You are aware that this has had the effect of hitting employees on Grey Book rates harder than those in sectors with systems of pay progression. CPD should be equalised and could be incorporated into a new system of pay progression beyond the competent rate.

3. New roles: The employees' side has also previously set out the union's expectation for any agreement in relation to broadening the role of a firefighter. We remain committed to developing the work of our service in the face of changing risk. This must be done by negotiation and agreement. It also requires investment from the governments of the UK. Nevertheless, these discussions should be immediately progressed.

In view of the above, the employers' side of the NJC needs to urgently address these issues by means of an immediate and substantial pay increase to NJC rates of pay.'

24. The usual pay award settlement date is 1 July. General informal discussions have already been taking place which to date have largely focused on issues around pay structure with the employees' side raising matters such as the current pay structure, period from trainee to competent firefighter, Continual Professional Development payments and local Additional Responsibility Allowances.
25. At the NJC meeting on 3rd June the employers' side made a 1.5% [offer](#) in response to the claim. The employees' side will now consider the offer and we will update FRAs in due course.

NJC for Brigade Managers (Gold Book)

26. A pay claim has also been received from the officers' side of the UK-wide NJC for Brigade Managers. which seeks '...an unconditional pay increase for all Brigade Managers, with effect from 1 January 2021, that is commensurate with other fire and rescue staff in the UK.' This NJC's remit covers senior managers – CFO, DCFO and ACFO.
27. The employers' side is considering its response to the claim.

LGA and NFCC Core Code of Ethics

28. The HMICFRS State of Fire & Rescue report 2019 recommended that by December 2020, the Local Government Association and the National Fire Chiefs Council, should produce a Code of Ethics for fire and rescue services, which should be adopted by every service in England.
29. In initial feedback to HMICFRS, both the National Fire Chiefs Council (NFCC) and the Local Government Association (following discussion with members) indicated the potentially inadvertent difficulty in imposing a single prescriptive code, with no local flexibility, upon FRAs and FRSs.

30. Accordingly, joint work to respond to the recommendation focused on a Core Code of Ethics (Core Code), which reflects best practice principles and has been designed to underpin the way we serve our communities, carry out our role and work together. It is intended to become the common foundation across all services in England. However, the Core Code approach recognises the differing positions within FRSs currently, as well as differing governance arrangements. Whilst all the principles within the Core Code should be adopted and embedded within each FRS, it also has the flexibility to add to (but not detract from) those principles at local level. This will help local FRAs/FRSs to reflect their local values, behaviours, and governance arrangement, for example, an FRS that is part of a county council and is likely to still have obligations placed upon it to evidence it also complies with the council's code.
31. A joint consultation on the Core Code was undertaken towards the end of last year. It was open to all interested parties, though within FRAs/FRSs targeted FRA Chairs, PFCCs, CFO/CEs and HR Directors/Strategic Leads. Outcomes from the consultation indicated a high level of support for the approach taken with an average of 84 per cent of respondents across the seven sections being content.
32. In January the APCC joined the LGA and NFCC as co-authors of the Core Code.
33. Members of the Fire Services Management Committee were content with the approach taken to the Core Code.
34. Guidance to accompany the Core Code was developed and four workshops undertaken with services to explore how implementation could best be achieved in order to ensure delivery of improvements and what the partner organisations could do to assist.
35. A final round of discussions with key stakeholders such as the Home Office, HMICFRS and the Fire Standards Board took place, all of which were supportive.
36. The [Core Code of Ethics](#) and its accompanying guidance were launched on 18 May following agreement of an extended deadline with HMICFRS to reflect resources being focused on the response to COVID-19 and more recently we had to take into account the pre-election period as well the point thereafter at which PFCCs take up their positions.
37. Communications specialists from each of the partner organisations worked together with leads from each organisation to develop a joint communications plan. Copies

of the media release, Core Code of Ethics and accompanying guidance have been circulated to Chairs, PFCCs and CFOs.

38. Members will be aware that the Core Code has been welcomed by the Home Office, including Lord Stephen Greenhalgh, Minister for Building Safety and Communities, as well as by HMICFRS and the Fire Standards Board. FRAs are expected to champion the Core Code and include as part of its scrutiny role its implementation and improvements sought and delivered, Senior managers in each service are expected to ensure that as a first step a gap analysis is undertaken to ensure the principles are at the heart of day-to-day activity and reflected in all policies and procedures. Thereafter to embed the Core Code so that the improvements sought can be delivered.

Code of Ethics Fire Standard

39. The Fire Standards Board has also completed its work in developing a [Standard](#) to sit alongside the Core Code. HMICFRS will be mindful of both documents when undertaking future inspections.
40. The Standard was also launched on 18 May to coincide with the launch of the Core Code and its accompanying guidance.

Fit for the Future

41. 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.
42. Initially the NFCC and the National Employers (England) worked in partnership to develop 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). Following discussion within the LGA's Fire Service Management Committee it was resolved that the LGA would be directly included, supporting the Fit for the Future approach and becoming the third partner in this work.
43. A consultation open to all interested parties has taken place and work is currently underway considering an analysis of the responses and how they can best inform future work and further engagement with the sector. The next iteration of Fit for the

Future will build upon that work and learning from recent events such as the Coronavirus pandemic.

Pension Scheme Transitional Protection Arrangements Discrimination Cases

44. 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).
45. 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 continues to be 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 national employers' Advisory Forum legal adviser, national employers' secretariat, and from the LGA its Corporate Legal Adviser and a Senior Employment Law Adviser.
46. 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.
47. A case management preliminary hearing on remedy 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.
48. 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.
49. The Order anticipated that the final determination on the remedy issue in regards to membership of the 1992 FPS would be resolved in 2020. That year has passed but in any event it was anticipated that the outcome would be (and ultimately was) affected by what the outcome was on the FRA's Schedule 22 appeal (see paragraph 50 below). It should be noted that irrespective of the Schedule 22 issue it may well be some time before this remedy can be put into effect fully 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.

50. As referred to in paragraph 16 above, the FRAs had the separate appeal to the Employment Appeal Tribunal (EAT) in relation to their potential defence under Schedule 22 of the Equality Act 2010 (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. The appeal was heard at the EAT on 16 December 2020 and the judgment was issued on 12 February. The EAT held that the FRAs cannot rely on the Schedule 22 defence. The Steering Committee and legal representatives considered whether to appeal the judgment and decided not to. For legal privilege reasons, further information was and continues to be provided to the person nominated by your service to receive communications in respect of this, and related, legal cases.
51. 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, and a formal letter was sent to government on behalf of FRAs. The same action was been taken in respect of Wales, Scotland and Northern Ireland as the National Employers is a UK-wide body. A meeting is currently being set up between the Home Office and LGA officers as representatives of the FRAs to discuss the costs issues, and that is expected to take place later this month.

Defence of other categories of claims

52. Another related category of employment tribunal claims has been 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.
53. We 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. It was explained that this would be on a cost-sharing basis, based on headcount, as for the original claims. The overwhelming majority of respondents were in favour and defences have now been submitted on behalf of the FRAs who have to date received claims.
54. Furthermore, another related category of employment tribunal cases emerged. These were issued by Slater and Gordon solicitors against fire and rescue authorities on behalf of firefighters. 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 of younger firefighters 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.

55. We again asked FRAs if 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. The overwhelming majority of respondents were in favour and we have therefore taken this forward and submitted defences. Once submitted the claims have been stayed pending developments in the original proceedings.
56. High Court claims have also recently been issued against two FRAs, concerning 'immediate detriment' issues (see paragraphs 13-17 above). In summary, the claimants, backed by the FBU, assert that they have suffered an immediate detriment because they were moved to the 2015 Scheme and have since retired. The benefits that they are now receiving under the 2015 Scheme are less generous than the benefits they would have received had they remained in the 1992 Scheme. The LGA is working with the two FRAs on the response to those claims and a defence has been submitted. Work is now taking place on next steps, in the context of wider immediate detriment issues.

Matthews & others v Kent & Medway Towns Fire Authority & others

57. This case relates to application of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 to retained duty system employees. Those Regulations were brought into force to implement the EU Part-time Workers Directive.
58. Members may recall that following a protracted legal process up to and including the House of Lords judgment, settlement agreements were reached in respect of terms and conditions in 2015 with both the RFU (now FRSA) and the FBU in regard to the many thousands of Employment Tribunal cases relating to potential discrimination under those Regulations. The LGA acted for FRAs through the auspices of the National Employers on the basis of a cost-sharing arrangement with FRAs similar to the arrangements in place for the legal cases already referred to in this report.
59. Defence of the pensions aspect of the case was led by central government. The House of Lords judgment allowed those who were serving during the period 1 July 2000 (the date the Regulations came into force) to the date on which they elected to join the 2006 Scheme, to have special provisions which generally reflect the rules of the Firefighters' Pension Scheme 1992 ("FPS 1992"). An options exercise took place to provide for those who qualified for membership of the modified Scheme, to elect to join by no later than 30 September 2015.

60. More recently, work has again had to take place on the pensions aspect of this case. This is because of a European Court of Justice judgment involving part-time judges (O'Brien), which in effect held that remedy could extend back before the Part-time Worker Regulations were implemented in July 2000. This also impacts on the fire service as the impact of the judgment and its interpretation of part-time workers' rights applies across all employers.
61. Consequently, together with legal representatives, discussions are taking place with the government's legal department and legal representatives for the FBU and FRSA.
62. As you would expect, we have also raised the concern that this will be unbudgeted expenditure for FRAs should central government not provide them with the necessary funding.

Inclusive Fire Service Group

63. 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.
64. Having undertaken a detailed assessment of the positions in the fire service it issued a number of improvement strategies, which 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.
65. The monitoring process also captured a range of views comparing original and current perceptions and included a survey of all FRSs; independently run focus groups involving BAME, LGBTQI and female employees and workshops with FRS Equality & Diversity Officers/leads and local trade union representatives.
66. A [full report](#) of the outcomes has recently been issued. (Completion of the analysis to inform the report had been delayed due to resources being diverted to Covid-19 matters.) The IFSG will now consider next steps.

Implications for Wales

67. 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 exceptions in this report are the Core Code of Ethics and Fit for the Future, which apply in England only. The WLGA is one of the four employer stakeholder bodies on the NJC for Local Authority Fire and Rescue Services.
68. The HMT consultation on age discrimination applies across all the devolved Fire and Rescue Authorities, however separate responses will be made. References in this report to the age discrimination consultation response are in relation to English FRAs only, Wales has its own advisory board who [responded](#) separately to the government consultation on reform.
69. The immediate detriment matters raised are the same in Wales where the matter of Section 61 of the Equality Act also applies. Welsh Government are dealing with immediate detriment cases arising from the guidance.