

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

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. A senior steering group with representatives from FSMC and NFCC was established to ensure senior leaders have oversight of developments. Cllr Nick Chard as the pension lead for FSMC sits on this group alongside Ian Hayton Pensions Lead for NFCC. This group meets monthly and is kept updated with regards to developments.
4. 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.

Valuation

GAD review of the cost control mechanism published

5. In 2018, the then Chief Secretary to the Treasury (CST) announced a review of the cost control mechanism by the Government Actuary to examine whether it was operating appropriately and in line with the original policy intentions.
6. On 15 June 2021, the CST laid [written statement HCWS90](#) to announce the publication of the [Government Actuary's review](#). The final report sets out the Government Actuary's assessment of the current mechanism and recommendations on possible changes. These changes are being now being consulted on.

HMT consultations published: cost control mechanism and discount rate methodology

7. HM Treasury (HMT) published two public consultations on 24 June 2021 alongside [written statement HCWS117](#). The consultations seek views on proposals to changes to the cost control mechanism in public service pension schemes, and secondly on the appropriate methodology for setting the discount rate used in scheme valuations.
8. The consultations run for eight weeks and close on 19 August 2021.

Consultation on changes to the cost control mechanism:

9. As detailed above, the Government Actuary has recently concluded his review of the cost control mechanism in the public service pension schemes. The Government has considered the report and is now consulting on three changes to the mechanism, all of which are recommendations by the Government Actuary:

10. Moving to a reformed scheme only design: to remove any allowance for legacy schemes in the cost control mechanism, so the mechanism only considers past and future service in the reformed schemes.
11. Widening the corridor: to widen the corridor from 2 per cent to 3 per cent of pensionable pay.
12. Introducing an economic check: currently the mechanism does not include changes in long-term economic assumptions and therefore cannot consider the actual cost to the Government of providing pension benefits. The Government proposes introducing an economic check so that a breach of the mechanism would only be implemented if it would still have occurred had the long-term economic assumptions been considered.
13. The outcome of the consultation will not impact on the 2016 cost control valuations.

Consultation on the discount rate (the “SCAPE rate”) methodology:

14. The Superannuation Contributions Adjusted for Past Experience (SCAPE) discount rate is a discount rate used in the valuation of unfunded public service pension schemes to set employer contribution rates.
15. It expresses future pension promises that are being built up in present-day terms and is set by HMT following a prescribed methodology. The current methodology for setting the SCAPE discount rate has been in place since 2011. This consultation seeks views on the objectives for the SCAPE discount rate and the most appropriate methodology for setting the SCAPE discount rate going forward.
16. The options are broadly:
 - 16.1 In line with long-term GDP growth (current approach); or
 - 16.2 In line with the Social Time Preference Rate (the previous approach).
17. The current level of the rate will not be changed by this consultation; the Government will carry out a separate exercise to set a new rate in line with the chosen methodology following this consultation.

Next steps

18. In considering a response to both consultations, the SAB will commission an independent paper from their actuarial advisers to be considered by the Cost-effectiveness meeting chaired by Cllr Roger Phillips, those discussions will then be taken to SAB in full. The outcome of those discussions will then be communicated to employers with regards to the likely effect of these consultations on employer contributions.

Scheme Advisory Board

Website

19. Sponsored by the scheme advisory board, the first national Firefighter pension website www.fpsmember.org went live on 20 May 2021.
20. 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.
21. 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.

Remedy self-assessment survey launched

22. 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.
23. 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.
24. The survey which was launched at the SAB update event on 20 May 2021 has now closed and the results will be presented to the scheme advisory board at their next meeting in September.

SAB letter to HMT

25. 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).
 - a. How to adjust contribution amendments for members of the FPS 2006
 - b. Taper members who have passed their 30-year service date
 - c. Contingent decisions
26. 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.

27. 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

28. On 10 June 2021, the Home Office issued an update to the existing informal and non-statutory guidance on immediate detriment cases. This can be found here: [Home Office informal detriment guidance 10 June 2021](#)
29. The guidance applies to pipeline immediate detriment cases (i.e. those cases where the member is about to retire and receive their pension) and does not cover where a pension is already in payment. This is technical guidance and aimed primarily at pension managers and practitioners.
30. To implement remedy in full, both primary and secondary legislation are required, as well as administration work (at local FRA level) to implement the changes. The deferred choice underpin will be implemented by October 2023.
31. As a result, the guidance will not offer resolution to all the current issues – there are outstanding technical issues that are being worked through across the public sector pension schemes and the responsible Government departments. The updated guidance aims to provide ways forward where possible.
32. The guidance provides informal advice but the overall responsibility for interpreting and applying the pension scheme regulations remains with each FRA as the relevant scheme manager. FRAs and administrators will need to consider the guidance in relation to their own process and systems.
33. To note, the Home Office guidance only applies to England as firefighters' pensions policy is devolved in Scotland, Northern Ireland, and Wales.
34. Following the release of the updated informal Home Office guidance on 10 June, the LGA information note was updated to take account of this additional guidance: [LGA immediate detriment information note – version 2](#). The purpose of this information note was to provide FRAs with additional information relating to immediate detriment.
35. **FRAs have been instructed that where they are receiving and considering processing claims to liaise with their nominated contact before taking action.**
36. A member note was provided directly to FRAs on 18 June 2021 for them to use if required to update scheme members on the current position.
37. As noted below, work is taking place in the context of wider immediate detriment issues for FRAs.

Changes to LGA Pensions Personnel

38. Clair Alcock, current Firefighters Pension Lead will be leaving LGA in early September to take up the position of Head of Police Pensions with NPCC, therefore this will be the last FSMC meeting for Clair Alcock.
39. Succession planning is on -going and Claire Hey and Jeff Houston, Head of Pensions will be the contacts for all Fire pension matters from September onwards.

KEY CURRENT WIDER WORKFORCE ISSUES

Pay 2021

NJC for Local Government Services (Green Book)

40. The NJC for Local Government Services (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.
 - 40.1 A substantial increase with a minimum of 10% on all spinal column points
 - 40.2 Introduction of a homeworking allowance for all staff who are working from home
 - 40.3 A national minimum agreement on homeworking policies for all councils
 - 40.4 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 reduction, or retaining the same hours and being paid a higher percentage of FTE
 - 40.5 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
 - 40.6 An agreement on a best practice national programme of mental health support for all local authorities and school staff
 - 40.7 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
 - 40.8 A joint review of the provisions in the Green Book for maternity / paternity / shared parental / adoption leave
41. 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:
 - 41.1 A national minimum agreement on homeworking policies for all councils
 - 41.2 An agreement on a best practice national programme of mental health support for all local authorities and school staff

- 41.3 A joint review of the provisions in the Green Book for maternity / paternity / shared parental / adoption leave
42. The current position is that the offer has been rejected by the unions, who are seeking further talks. The employers' side has indicated that it will respond in due course.

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

43. The National Joint Council for Local Authority Fire and Rescue Services covers uniformed employees ranging from firefighters to middle managers across the UK. Following receipt of a claim in April, the 2021 pay award for this group has now been agreed. An increase of 1.5% will be applied to [all pay rates](#) and [continual professional development payments](#) with effect from 1 July (the usual settlement date).

NJC for Brigade Managers (Gold Book)

44. This UK-wide negotiating body covers senior fire service managers such as chief fire officers, deputy chief fire officers and assistant chief fire officers. Following receipt of a claim in April, the 2021 pay award for this group has now been agreed. An increase of 1.5% will be applied to basic pay with effect from 1st January (the usual settlement date).

LGA, NFCC and APCC Core Code of Ethics

45. The [Core Code of Ethics](#) and its accompanying guidance were launched on 18 May.
46. 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.
47. 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.
48. Initial feedback suggests that as requested the gap analysis is now taking place within services. A further round of workshops will be held with services later in the year to assess progress and to receive feedback on anything else the three partner organisations can do to assist.

Code of Ethics Fire Standard

49. 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.
50. The Standard was also launched on 18 May to coincide with the launch of the Core Code.

Fit for the Future

51. 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.
52. 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.
53. 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.
54. The next iteration of Fit for the Future will build upon that work and learning from recent events such as the Coronavirus pandemic. Discussions are taking place between the new NFCC leadership and LGA and National Employer (England) leads at member and officer level. At the last meeting it was agreed that work on the consultation report will be concluded by the end of this month and an engagement plan to connect with stakeholders going forward also developed by the end of this month.

Pension Scheme Transitional Protection Arrangements Discrimination Cases

55. 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).
56. 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.

57. 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.
58. 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.
59. 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.
60. 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 61 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.
61. 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.
62. 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

63. Another related category of employment tribunal claims has been issued by the FBU 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.
64. 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.
65. 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.
66. 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.
67. High Court claims have also more recently been issued against two FRAs, concerning 'immediate detriment' issues (see paragraphs 28-37 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. The FBU has agreed to discussions and they are progressing. While the court cases haven't been withdrawn it is hoped that they, and in turn other immediate detriment cases, can be resolved through the outcome of those discussions.

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

68. 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.
69. 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.

70. 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.
71. 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.
72. Consequently, together with legal representatives, discussions are taking place with the government's legal department and legal representatives for the FBU and FRSA.
73. 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

74. 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.
75. 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.
76. 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.
77. 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

78. 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.
79. 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.
80. While the immediate detriment matters raised are the same in Wales where the matter of Section 61 of the Equality Act also applies, the Home Office guidance only applies to England as firefighters' pensions policy is devolved in Scotland, Northern Ireland, and Wales. Welsh Government are dealing with immediate detriment cases arising from the guidance.