

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. The [Public Service Pensions and Judicial Offices Bill](#) (PSP&JO Bill) was introduced to the House of Lords on 19 July 2021 and had its second reading on 7 September 2021. The Bill is the primary legislation which closes final salary schemes for pension build-up past 31 March 2022 and moves all remaining members into FPS 2015, while ensuring that existing transitional protections such as the final salary link and double accrual are retained.
2. The Bill also makes provisions for the retrospective remedy which will remove discrimination for the remedy period (1 April 2015 to 31 March 2022) by offering scheme members a choice of benefits for these seven years, at the point that they retire.
3. A summary of the clauses is available in our [PSP&JO Bill LGA FPS update](#).
4. 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.
5. The first phase of necessary software development is underway and FRAs are now starting to receive their data collection extracts from administrators and are working on collating the data required to convert remedy (CARE) benefits into legacy (final salary) service, and vice-versa for the Deferred Choice Underpin (DCU).
6. While we can't share any of the confidential detail, we have received quotes from both FPS software suppliers for the cost of developing remedy solutions. We are continuing to work with NPCC on engagement with the suppliers, and we will be jointly analysing the proposals for value for money and considering what scope there might be for negotiation. The Home Office provided a £3m grant to Fire and Rescue Services in respect of their pension admin costs incurred in 2020/21.

Immediate detriment

7. As detailed in paragraphs 57 to 64 below, the LGA and FBU reached agreement on an Immediate Detriment Framework on 8 October 2021 and this was announced to FRAs in a joint statement which accompanied the Memorandum of Understanding (MoU). Further technical guidance has also been provided to FRA FPS practitioners and administrators on implementation of individual cases.
8. The Framework will assist FRAs to make immediate detriment payments to members who have retired or are due to retire, in a consistent manner and in line with agreed timescales.
9. As set out in paragraph 63 below, we encourage each FRA to adopt the Framework.

FPS 2006 special members (Matthews)

10. While negotiations on the scope and mechanics of the settlement in Matthews are still being finalised (see paragraphs 65 to 70 below), FRAs have been made aware of the forthcoming second options exercise. We have started project management discussions with the Home Office and the Government Actuary's Department (GAD); as part of this we are currently undertaking a lessons-learned activity.

FPS administration changes

11. One further administrator has withdrawn from the FPS market, with Surrey FRS moving from Surrey Pension Fund to XPS on 1 September 2021.
12. Warwickshire FRS is also currently tendering for a new provider.

Scheme Advisory Board (SAB)

SAB and employer levy

13. We are currently finalising the SAB and employer budget for 2021-22 which is used to set the levy. The SAB element of the budget is approved by the Secretary of State via the Home Office, and we will be seeking NFCC agreement to the employer element. There is likely to be an increase to add much-needed resource to the team, but it should not be significant.

HMT consultation responses

14. The SAB submitted responses to the HMT consultations on the [cost control mechanism](#) and [discount rate methodology](#) in August. The consultations were undertaken following the [Government Actuary's review of the cost control mechanism](#). Both will have an impact on the way the schemes are valued in the future, and a subsequent impact on both employee and employer contribution rates.
15. The SAB was able to make robust responses on the impact on the FPS, due to the Chair's experience as an actuary and utilising the SAB's actuarial advisers – First Actuarial.
16. The SAB broadly agreed with the recommendations made by the Government Actuary that were consulted on, but noted that a scheme-specific corridor for assessing breaches of the cost-control mechanism may be more appropriate for the FPS due to the high cost of the scheme. The SAB were also cognisant of the potential for intergenerational unfairness within the proposed reformed scheme only design, which would remove any allowance for legacy schemes in the cost control mechanism, so that the mechanism only considers past and future service in the reformed schemes.
17. On the discount rate consultation, the SAB expressed a preference for the Social Time Preference Rate (STPR) methodology as this was felt to be a more stable economic measure. The SAB supported bringing regular reviews of the discount rate in line with the 4-yearly scheme valuation cycle.
18. We are still awaiting the final results of the cost-control element of the 2016 valuation.

19. On 4 October 2021, HMT published its [response to the consultation on the cost control mechanism](#). In summary, the government is proceeding with its three proposed options:
- 19.1. **Reformed scheme only:** The view was that this ‘middle ground’ struck the right balance of risk.
- 19.2. **Widen corridor:** While the SAB’s comments on scheme specific corridors were quoted in the response (p19), the government has retained their proposed of a fixed 3% for all schemes.
- 19.3. **Economic check:** This will be linked to long-term GDP growth, as HMT do “*not believe that the Social Time Preference Rate (STPR) would be an appropriate measure*”. If the STPR is adopted for the SCAPE discount rate, then this could mean that different measures of GDP growth are used to a) set employer contributions and b) perform the economic check.

Remedy self-assessment survey

20. Between 20 May and 31 August 2021, FRAs were invited to participate in a self-assessment survey sponsored by the SAB. The survey was intended as a temperature check of current administration arrangements and preparedness for age discrimination remedy and Matthews.
21. We were pleased to receive a 100 per cent response rate from FRAs across England and Wales. The results of the survey have been analysed and the draft research report was presented to the SAB on 30 September 2021.
22. The report will now be finalised before publication. To share one key statistic now – 87 per cent of FRAs have indicated that they expect to need additional resource to implement Sargeant (remedy) and Matthews.

Template FPS administration strategy

23. In June 2020 we launched a consultation on a template pension administration strategy for the FPS, which was developed following a recommendation in [AON's 2019 review](#) of the administration and management of the scheme. The strategy is intended to formalise expectations and standards between FRAs and their administrators.
24. The [initial consultation response](#) was published in September 2020. Following consideration of all feedback received, the [final consultation response](#) and template strategy were issued in July 2021. The final strategy is available from the [guides and sample documents page](#) of www.fpsregs.org as a Word document for FRAs to download and adapt to suit their individual requirements.
25. The Pensions Regulator reported in section 4.3 of their latest [governance and administration survey results](#) that just under half of Firefighters’ schemes had an administration strategy, compared to almost three-quarters of schemes across the public

sector. We hope that publication of the template will help schemes to put an administration strategy in place and increase this outcome for the next survey.

Changes to LGA Pensions Personnel

26. Claire Hey has been appointed to the position of Senior Pensions Adviser for the FPS, succeeding Clair Alcock.
27. Recruitment for Claire's previous role as Firefighters' Pensions Adviser has been advertised as a dedicated employer-focused role. The intention is to split the existing role into two full-time posts on the team – an employer role to support FRAs and practitioners, and a governance role to support the SAB and its committees. The governance role will be advertised as soon as funding is secured within the SAB levy.
28. We will also be seeking to secure funding for a 0.5 FTE communications role to assist with website development and maintenance.

KEY CURRENT WIDER WORKFORCE ISSUES

Pay 2021

NJC for Local Government Services (Green Book)

29. 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.
 - A substantial increase with a minimum of 10% on all spinal column points
 - Introduction of a homeworking allowance for all staff who are working from home
 - A national minimum agreement on homeworking policies for all councils
 - 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
 - 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
 - An agreement on a best practice national programme of mental health support for all local authorities and school staff
 - 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
 - A joint review of the provisions in the Green Book for maternity / paternity / shared parental / adoption leave

30. A formal offer was made to the trade unions on 14th May, the pay element of which was 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:
- A national minimum agreement on homeworking policies for all councils
 - An agreement on a best practice national programme of mental health support for all local authorities and school staff
 - A joint review of the provisions in the Green Book for maternity / paternity / shared parental / adoption leave
31. The offer was rejected by the unions, who sought further talks. The offer was subsequently increased to a [final pay offer](#), including an increase of 1.75% other than on pay point 1 where the offer is 2.75%. All three unions decided to consult their members with a recommendation for rejection.
32. UNISON members voted by a majority of 79 per cent to 21 per cent to reject the final offer. Its local government committee has also decided to begin preparations for an industrial action ballot.
33. GMB members voted by a majority of 75 per cent to 25 per cent to reject the final offer. It will shortly conduct a consultative industrial action ballot, the result of which will determine whether there is support to then hold a formal ballot for industrial action.
34. Unite members voted by a majority of 81 per cent to 19 per cent to reject the final offer. Unite's local government committee has met and decided to begin preparations for an industrial action ballot.
35. Accordingly, the trade unions have registered a pay dispute with the National Employers. The NJC for Local Government Services National Employers will be meeting on 19 October to take stock of the situation. FRAs and FRSs are aware of the situation.

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

36. Members will recall that the matter of a pay award for 2021 has already been settled for both of these groups, at 1.5%.
37. At the most recent meeting of the NJC for LAFRS on 7th October the Independent Chair thanked Cllr Mark Healey, who was stepping down, for all his work as a member of the employers' side of the NJCs. The Independent Chair also welcomed PFCC Roger Hirst.

LGA, NFCC and APCC Core Code of Ethics

38. Members will recall that the [Core Code of Ethics](#) and its accompanying guidance, developed in partnership with the NFCC and APCC, were launched in May and welcomed by the Home Office, as well as by HMICFRS and the Fire Standards Board (a supporting Fire Standard was also launched at that time).

39. FRAs are expected to champion the Core Code and include as part of the 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.
40. 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 next month to assess progress and to receive feedback on anything else the three partner organisations can do to assist that progress and delivery of improvement.

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. Fit for the Future is a partnership piece of work involving the LGA, NFCC and the National Employers (England) who 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).
43. An update on next steps is covered elsewhere on today's agenda, which includes the forthcoming engagement sessions with Chairs and CFOs both of whom are encouraged to attend on one of the dates – 22 or 27 October. The invitation also includes members of the National Employers (England) who, alongside LGA and NFCC, remain committed to this work.

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. 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 53 below). It should be noted that irrespective of the Schedule 22 issue it will be some time before this remedy can be put into effect fully for all claimants. Furthermore, there are other issues relating to remedies to be resolved, for example in regards to claims for injury to feelings. In respect of the tribunal remedy proceedings a case management hearing took place on 24th September at which directions were made on the preparatory steps to be taken for a full remedy hearing. That remedy hearing is now listed to take place on 13 – 28 October 2022. Pending that remedy hearing an Order in substantively the same form as the interim Order remains in place. 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. 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 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 taken in respect of Wales, Scotland and Northern Ireland as the National Employers is a UK-wide body. Discussions are currently taking place between the Home Office and LGA officers as representatives of the FRAs to discuss the costs issues. Most recently, an update has been provided to each

government following the successful development of the LGA (in its role representing FRAs across the UK) and the FBU of a Framework to assist FRAs and pension scheme members to resolve Immediate Detriment issues while remedying legislation is being put in place, which is expected to be by October 2023.

Defence of other categories of claims

52. 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.
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. Following that the claims have been stayed pending developments in the original proceedings.
56. Finally, the FBU has recently issued another batch of employment tribunal claims for its members who had not brought claims before. Those claims are broadly of the same type of claims that have been brought previously and accordingly we are coordinating the defence of those claims on behalf of FRAs.

Immediate Detriment

57. You are aware of the legal cases brought in the High Court against the London Fire Commissioner and Nottinghamshire and City of Nottingham Fire and Rescue Authority. The cases concerned Immediate Detriment issues in relation to the McCloud/Sargeant judgment and the claimants were supported by the FBU.

58. It was apparent similar issues would arise more widely across the sector. The FBU was clear that matters for affected individuals needed to be resolved sooner rather than later and it would, if necessary, support further legal cases. Many FRAs across the UK on an individual basis had indicated that they wished to be able to deal with Immediate Detriment issues as soon as possible. The problem was not an unwillingness to do so but rather the need to identify and develop a suitable mechanism to be able to do so in a way which minimised the risks while the Government is putting in place the McCloud/Sargeant remedying legislation.
59. With the support of all FRAs across the UK, the LGA entered into discussions with FBU to identify a mutually acceptable Framework, setting out a mechanism for handling Immediate Detriment cases, to assist all parties prior to completion and implementation of the McCloud/Sargeant remedying legislation. This would help in resolving the genuine difficulties that had arisen for FRAs in making payments to those affected (including for example issues around unauthorised payment charges and contribution holidays) and in removing the potential for court claims more widely across FRAs.
60. During the course of the discussions, the Government laid primary legislation before Parliament in the Public Service Pensions and Judicial Offices Bill and will make secondary legislation pursuant to the Bill (together, the Remedying Legislation) to provide the affected pension scheme members with a remedy for the discrimination found in the McCloud/Sargeant claims.
61. Following a series of complex discussions including respective legal representatives, which were also able to utilise the longstanding national relationship between the LGA and FBU, we were pleased to advise FRAs on 8th October that agreement had been reached on a Memorandum of Understanding and Framework and the details were circulated to FRAs and FRSs on the same day.
62. Both parties believe the Memorandum of Understanding and Framework are consistent with the principles currently set out in the Bill and will mean that appropriate action can be taken prior to October 2023. As and when parts of the Remedying Legislation covering the relevant part of the Framework come into effect the MoU and Framework indicate that the relevant Remedying Legislation will then be used instead.
63. Each FRA is now asked to consider adoption of the Framework. Mindful of the range and complexity of the issues covered upon which we worked with legal representatives, specialist QCs and pension specialists, and discussed with HMT and the Home Office, we would encourage such adoption. It will provide a consistent approach to Immediate Detriment cases across the fire and rescue service and should remove the risk of further legal action supported by the FBU in respect of matters contained within the Framework, assuming it has been applied correctly of course.
64. You may also wish to be aware that, separately, we and respective legal representatives have worked with NFRA and LFC in respect of the High Court cases and can also advise that settlement has been reached. Settlement took into account the principles in the Framework, however, as is the norm in such settlements, details will remain confidential. The Summary Judgment hearing due to be heard in the High Court later this month is therefore no longer required.

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

65. 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.
66. 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.
67. 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.
68. 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.
69. Consequently, together with legal representatives, discussions are taking place with the government's legal department and legal representatives for the FBU and FRSA on implementing a remedy for the pensions aspects as required by the O'Brien case.
70. 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

71. 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.

72. 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.
73. 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. A [full report](#) of the outcomes has been issued. (Completion of the analysis to inform the report had been delayed due to resources being diverted to Covid-19 matters.)
74. The IFSG will now consider next steps and discussion is also taking place with HMICFRS in respect of England on how best the work of the IFSG can interact with and inform the work of HMICFRS.

Implications for Wales

75. 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.
76. The immediate detriment matters raised are the same in Wales where the matter of Section 61 of the Equality Act also applies. Given the work to agree a Framework took place under the auspices of the National Employers, also available to Welsh FRAs.