

Workforce Report

Purpose of Report

To update the FSMC on matters in relation to fire service industrial relations and pension matters.

Summary

This report 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 – Home Office consultation

1. On 8 November 2021, the Home Office launched a consultation on the amendments to the pension scheme regulations to deliver the first set of changes to remove the transitional protections from the FPS 2015: [Amendments to the firefighters' pension schemes in England 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/amendments-to-the-firefighters-pension-schemes-in-england-2022)
2. This includes how the Home Office will ensure that all members of the Firefighters' Pension Schemes who continue in service will be members of the reformed scheme from 1 April 2022. This means closing the legacy schemes to future accrual from 31 March 2022, so that all members are treated equally for future service. This involves moving any remaining legacy scheme members - i.e. those who had received full transitional protections - into the reformed scheme from 1 April 2022.
3. These changes enact the policy announced in February of this year and are consequential to the provisions in the [Public Service Pensions & Judicial Offices Bill](#) (PSPJO Bill) currently before Parliament. The Bill is expected to receive Royal Assent this week.
4. On 2 January 2022, the [LGA submitted its response to the consultation on the prospective changes](#).
5. The consultation response is due to be published on 8 March 2022, and we expect the amending regulations to be laid shortly afterwards.

Legal cases related to pension matters

6. Members are aware of the range of legal cases brought against FRAs (supported by the FBU) that fall broadly under the category of the McCloud/Sargeant litigation. As they were named as respondents in the cases, Fire and Rescue Authorities (FRAs) had to submit defences. The defences continue 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.
7. The details of each category have been covered in previous reports. Therefore, each category is covered in short below, together with the current positions:
 - (a) McCloud/Sargeant – this is the main category and concerns 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).

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 (a request to appeal was rejected by the Supreme Court).

Current position - an interim [Order](#) on remedy was agreed by all parties. It does not bind the parties beyond the limited interim period before the final declaration. 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 1992 FPS. While the Order anticipated that the final determination on the remedy issue in regard to membership of the 1992 FPS would be resolved in 2020, the main 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.

- (b) Another related category of employment tribunal claims has been issued by the FBU against fire and rescue authorities on behalf of firefighters. 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.

Current position – Working together with Bevan Brittan, the solicitors acting for FRAs, we coordinated the defence of those claims on behalf of FRAs.

- (c) More recently the FBU 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

Current position – Working together with Bevan Brittan, we are coordinating the defence of those claims on behalf of FRAs.

- (d) Claims 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. 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.

Current position – Working together with Bevan Brittan, we co-ordinated the submission of defences and the cases are currently stayed.

- (e) *Matthews & others v Kent & Medway Towns Fire Authority & others* - 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. 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. The LGA acted for FRAs through the auspices of the National Employers.

Defence of the pensions aspect of the case was led by 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"). A time-limited options exercise took place between 2014 and 2015 to allow eligible individuals to join the FPS. While the benefits awarded to special members largely mirrored the benefits under the FPS 1992, the FPS 2006 was amended as the FPS 1992 was closed.

Current position - 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. FRAs are aware that this will necessitate a second options exercise.

Negotiations on the scope and mechanics of the settlement are we hope now reaching the final stages and we will provide a further update in due course. Regulations will be drafted by the Home Office and consulted on following the conclusion of the legal discussions.

8. Legal costs in relation to the above cases are currently shared between FRAs. 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 UK governments on behalf of FRAs. Discussions have taken place between the Home Office and LGA officers as representatives of the FRAs to discuss the costs issues.

Immediate Detriment Framework

9. Members will be aware of the Memorandum of Understanding and Immediate Detriment Framework agreed with the FBU on 8 October 2021. Guidance was also developed and released to FRAs at the same time.
10. The following month, the Home Office withdrew its informal and non-statutory guidance on processing certain kinds of immediate detriment case ahead of legislation, with immediate effect. The guidance was originally issued on 21 August 2020 and updated on 10 June 2021.
11. The Home Office stated that, although the decision remains for scheme managers to make, it does not advise schemes to process any immediate detriment cases before legislation is in place, given in its view the risk and uncertainty of correcting benefits before the PSPJO Bill, scheme regulations and relevant tax legislation come into force.

12. The LGA and FBU Memorandum of Understanding and Framework were developed in light of the direction of travel of the PSPJO Bill and discussion with government on its intentions. However, this more recent government action is a cause of concern to FRAs who are considering adopting or who have adopted the Framework. Consideration of the government's statements has taken place with legal advisers and Members will appreciate the varying specialist natures of the aspects and the complexity of the issues at hand. Further guidance has been issued to FRAs accordingly.
13. Also of concern is the Home Office's latest position on funding for immediate detriment, which stated that any costs falling outside of the pension account would not be reimbursed. There has never been a guarantee that costs arising from the Sargeant age discrimination legal judgment would be covered by government and therefore its latest action has not changed that. However, the FRAs position has long been that the government must fund all the costs of remedy. The LGA will accordingly continue to seek funding for all the costs arising out of the Sargeant age discrimination pensions claims, whether under New Burdens or otherwise.
14. The LGA is continuing to press the government for further clarification/advice, and we are aware that similar issues are now arising across the other public service schemes. Discussions are also being maintained with the FBU. We will provide a more substantive update as soon as it is possible to do so.

DWP consultation on pensions dashboards

15. On 31 January 2022, the Department for Work and Pensions (DWP) published a [consultation on draft Pensions Dashboards Regulations](#). The consultation closes on 13 March 2022.
16. The purpose of this consultation is to seek views on a range of policy questions relating to the creation of pensions dashboards. An indicative draft of the Regulations is included to show how DWP envisage the policy would be turned into law.
17. Pensions dashboards will allow individuals to see information about all their pensions, including the State Pension, in one place. These draft regulations set the requirements to be met to deliver this and will place a legal duty on pension providers to provide information to the dashboards. The consultation proposes a staging deadline of the end of April 2024 for public service pension schemes, including the FPS. This means that FPS administrators will need to be able to connect to the digital architecture by this date and be ready to provide individuals' data to them via the dashboards.
18. We will be responding to the consultation on behalf of the LGA. Our response will express concern about FPS administrators' ability to meet the staging deadline given the other pressures they face and the data that will be available at that time.
19. We expect the McCloud remedy regulations to come into force from 1 October 2023. FPS administrators will already be under huge pressure at this time, implementing the retrospective part of remedy.
20. We anticipate that the second options exercise for special members of FPS 2006 (Matthews) may be underway by then too, adding further resource pressure on FRAs and

their administrators. We have significant concern that the information available in April 2024 will not reflect both the legacy and reformed scheme benefits that a member could choose from at retirement. This is because the first set of annual benefit statements that will include remedy benefits will not be issued until August 2024. Providing members will incorrect or incomplete information could undermine the credibility of the dashboard and decrease member engagement.

21. For these reasons, our response will state that we are doubtful that a staging deadline of April 2024 is achievable. We will also stress the impact of any costs of connecting to the dashboard on the financial viability of the FRAs.

Scheme Advisory Board (SAB)

SAB response to Home Office consultation

22. As reported, the Home Office has recently consulted on amendments to the pension scheme regulations to deliver the first set of changes to remove the transitional protections from the FPS 2015.
23. On 2 January 2022, the [SAB submitted its response to the consultation on the prospective changes](#).

FPS Remedy 2015 – Your questions answered

24. Following the Scheme Advisory Board (SAB) meeting of 30 September 2021 an action was taken to commission a suite of illustrative member scenarios to provide members with a better understanding of the implications of the McCloud/ Sargeant remedy on their benefits. This is to include a selection of members personas across the schemes, with benefits illustrated at a range of key retirement milestones.
25. Barnett Waddingham was appointed to deliver this work following a successful procurement exercise and as part of the project, proposed a warm-up communication to answer some key concerns or recurring questions that members have about the changes that are due to take place on 1 April 2022 and beyond.
26. We are pleased to present the [FPS 2015 Remedy 'fact checker'](#) which has been in collaboration with the SAB, the Board secretariat, and the Scheme Management & Administration committee. We hope that this document will alleviate some concerns and answer some unknown questions for the FPS membership.
27. This document is intended to be circulated as widely as possible. We have asked FRSs to distribute this within your authorities using your normal communication channels, including uploading to any internal or external member-facing websites as appropriate. The document text has been added as a new page to the [FPS Member 2015 Remedy section](#), with the PDF available as a download.

28. The illustrative scenarios are currently being finalised and will be provided in early March.

FRA remedy self-assessment survey research report

29. The SAB published the [outcomes of the FRA remedy self-assessment survey](#) in December 2022.
30. A [summary of the results and next steps](#) were presented to FRAs and their administrators at the FPS 'coffee morning' session on 9 November 2021, ahead of the full report being published.

Changes to LGA Pensions Personnel

31. We were delighted to welcome Claire Johnson to the team from 24 January 2022.
32. Claire has 12 years' public service pension experience, in the LGPS and Firefighters' Pension Schemes. Claire commenced Local Government employment in 2010 at West Yorkshire Pension Fund, before moving to West Yorkshire Fire and Rescue Service in 2016 where she has undertaken the role of Pensions Manager.
33. Claire's role at the LGA is to provide support to FRAs and FPS practitioners. In addition, Claire will lead the development of national FPS communications.
34. Interviews for the new role of Firefighters' Pensions Adviser – Governance are taking place in week commencing 7 March 2022.

KEY CURRENT WIDER WORKFORCE ISSUES

Pay

NJC for Local Government Services (Green Book)

35. Support staff in fire and rescue services tend to be employed on NJC for Local Government Services terms and conditions (Green Book). Its scope is England, Wales and Northern Ireland. Employee representatives on that NJC are Unison, Unite and GMB. Agreement has recently been reached within that NJC on the pay award effective from 1 April 2021.
36. The settlement provides:
 - An increase of 1.75%
 - Recommencement of the review of Term-Time Only working arrangements, which was paused at the outbreak of the pandemic.
 - Agreement to enter into discussions on homeworking policies, mental health support and maternity etc leave.
37. The usual settlement date within this group is 1 April. A pay claim in respect of 2022 is awaited.

NJC for Local Authority Fire and Rescue Services

38. The scope of this UK-wide NJC is uniformed employees (other than those in Brigade Management roles) The usual settlement date for this (Grey Book) group is 1 July. While early discussions have commenced, we would not expect to receive a claim at this point in time.

NJC for Brigade Managers of Local Authority Fire and Rescue Services

39. The scope of this UK-wide NJC is senior uniformed managers at Chief, Deputy Chief and Assistant Chief Officer levels. The usual settlement date for this (Gold Book) group is 1 January. A pay claim has not yet been received.
40. An annual pay levels survey usually informs pay discussion within this group. Due to the resource pressures within services caused by the Covid pandemic, the NJC did not run a survey last year. However, as things return to normal, we will shortly be issuing the next survey.

LGA, NFCC and APCC Core Code of Ethics

41. The [Core Code of Ethics](#) has been promoted and welcomed across the groups the partnership bodies represent - NFCC, LGA and APCC - since its publication last year. The Core Code and its accompanying guidance was 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).
42. 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.
43. During November 2021, the partnership bodies undertook several well attended workshops with fire and rescue services to complement initial awareness activities and to understand early implementation.
44. From feedback gathered during these workshops, services demonstrated awareness of the Core Code, with most already initiating gap analysis exercises. Additionally, the partnership bodies understand that services are in the process of adapting their local, associated policies to ensure the Core Code is taken into account. Services have considered how best to work with their employees in implementing the Core Code and we understand some services are already at this stage.
45. Looking forward, the partnership bodies will undertake a further “temperature check” with all services. Further workshops will be delivered, this time focussing upon progressing implementation and subsequently delivering the desired outcomes. This will include

sharing of good practices. Discussion will also continue with HMICFRS to understand their approach to inspection of the Core Code.

46. The partnership bodies will continue to raise the profile of the Core Code (including at this year's LGA Fire Conference), and the importance for governance bodies in delivering effective scrutiny in this area.

Fit for the Future

47. 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.
48. 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 outcomes of inspection by Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS).
49. A progress report is covered elsewhere on today's agenda, which includes feedback from the recent engagement sessions with FRA Chairs, Chief Fire Officers and other senior officers.

Inclusive Fire Service Group

50. 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.
51. 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.
52. 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 was issued. (Completion of the analysis to inform the report had been delayed due to resources being diverted to Covid-19 matters.)
53. The IFSG will now consider next steps and discussion is continuing with HMICFRS in respect of England on how best the work of the IFSG can interact with and inform the work of HMICFRS.

Conciliation

54. The National Joint Council for Local Authority Fire and Rescue Services provides a confidential conciliation service when it is proving difficult for industrial relations discussions at local level to reach agreement on one or more proposed changes to terms and conditions. When jointly requested by the parties at local level, the NJC's Joint Secretariat will work with them to endeavour to facilitate a mutually acceptable agreement. Two such conciliations have recently been undertaken and with successful outcomes.

Implications for Wales

55. 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.
56. 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, it is also available to Welsh FRAs.