

## **Workforce Report**

### **Purpose of Report**

To update the Committee 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**

### **Legal cases related to pension matters**

1. Members are aware of the range of legal cases brought against Fire and Rescue Authorities (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.
2. 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, legislation to provide the main remedy needs to be put in place and a remedy hearing to assess injury to feelings awards is now listed to take place on 14 – 28 October 2022. Preparations for that hearing are taking place. Pending the legislation and the 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 are coordinating the defence of those claims on behalf of FRAs. The claims are currently stayed pending the outcome of the main FBU claims.

- (c) The FBU has also 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. The claims are currently stayed pending the outcome of the main FBU claims.

- (d) Claims have been 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 are coordinating the defence of those claims and the cases are currently stayed, pending the outcome of the main FBU claims.

- (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.

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.

Current position - On 9 March 2022, after an extended period of negotiations, a [Memorandum of Understanding \(MoU\)](#) was agreed between the government, the Fire Brigades Union, the Fire & Rescue Services Association, and FRA employers.

It was confirmed that remedy for retained firefighters affected by the O'Brien judgment will be provided by way of a second options exercise allowing in-scope individuals the opportunity to purchase pension entitlement as a special member of the FPS 2006. Under the terms of the MoU it was agreed that the Employment Tribunal proceedings should be stayed for 18 months to enable that options exercise to progress.

A further issue arose during negotiation of the MoU around an inability to aggregate periods of pensionable service in the FPS as a retained firefighter with periods of service as a wholetime firefighter ("aggregation"). This has been addressed by affected retained firefighters (or their representatives) having the ability to give written notification to the GLD (on behalf of the Home Office) and FRAs prior to the commencement of the second options exercise of:

their identity; and  
details of the factual and legal basis of any aggregation claims

with a view to discussions for six months from the MoU date on a resolution of those claims. If agreed resolution of the aggregation issues was not reached by then it has been agreed that those Claimants can ask for the stay on their tribunal claims to be lifted so the tribunal can determine outstanding issues in relation to them. That has not happened.

3. 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 are ongoing between the Home Office and LGA officers as representatives of the FRAs to discuss the costs issues.

### **Matthews and the second options exercise**

4. The LGA continues to assist the Home Office with their policy development in this area. Project management meetings are held between the LGA, the Home Office and the Government Actuaries Department (GAD) every four weeks.
5. Additionally, a Technical Working Group (TWG) was requested by the Home Office which LGA have agreed to facilitate. The TWG comprises of a small number of administrators and FRAs, the purpose of the meeting is so that they can share their experiences of the first options exercise and assist the Home Office with any areas of technical uncertainty. The first meeting took place on Friday 9 September, with a follow-up meeting scheduled for Thursday 22 September.

### **Immediate Detriment Framework for McCloud/Sargeant type cases**

6. The LGA is continuing to explore with the FBU and respective legal representatives what, if any, amendments could be agreed to the Framework to minimise risk to FRAs and scheme members in light of statements from the Home Office and HM Treasury, and which would further assist FRAs in being able to process immediate detriment cases under that Framework. This includes seeking specialist legal advice where necessary.

7. Via the Framework, we are trying to find a way through potential issues for FRAs, to try to avoid future costly and time-consuming litigation and extended delay to scheme members, while ensuring that the risks are clearly highlighted, and scheme managers can make informed decisions
8. We also continue to apply pressure to government seeking an earlier resolution to the points they have raised. A joint letter from the LGA and FBU was submitted to the government on 4 April 2022. While we have not had a formal response to that letter, we remain in continual dialogue with the Home Office and HMT.
9. As previously advised, the FBU's position has long been that it will pursue legal action if immediate detriment issues cannot be resolved in a timely manner.
10. We have asked FRAs to be alert to the receipt of future claims brought on behalf of scheme members, and to inform the LGA immediately on such receipt.

### **Scheme Advisory Board (SAB)**

#### **SAB remedy engagement sessions**

11. The SAB has been invited by the Home Office to take part in a series of joint engagement sessions with the Police SAB to consider scheme specific versions of the Provision Definition Documents (PDDs) which define the provisions of the [Public Service Pensions and Judicial Offices Act \(PSPJOA\) 2022](#) for each area of the 2015 Remedy.
12. The first meeting took place on 24 June 2022 and discussions took place on the interest and eligibility PDDs with a second meeting taking place on 27 July 2022 which concentrated on ABS/RSS, deferred choice, immediate choice and default positions. The next meeting took place on 24 August 2022 where discussions took place on transfers and added pension.

#### **SAB response to HMT letter**

13. On 17 December 2021, the Chair of the SAB wrote an [open letter to HMT on the withdrawal of the Home Office informal guidance](#) on immediate detriment. The letter asked for more information on the risks and uncertainties which HMT said arose as a result of processing cases ahead of legislation.
14. On 23 March 2022, [HMT provided a response outlining the factors behind the withdrawal](#) in more detail. The response highlighted that Section 61 of the Equality Act 2010 did not, in HMT's opinion, allow for amendment of a member's tax position. The response detailed several tax complexities which had been identified and will be dealt with through legislation.
15. While the Board welcomed the response, the Chair in particular was not content that all of the questions raised had been addressed satisfactorily, and that the tone of the letter was inconsistent – varying between what the implications 'would' or 'could' be.
16. On 20 June 2022, the Chair wrote an [open letter in response to HMT's reply](#) seeking further clarity on the extent of Sections 61/ 62 and the tax implications detailed.

17. The Chair of the SAB is currently waiting for a response to this letter.

### **SAB engagement sessions on the Matthews remedy**

18. The Scheme Advisory Board and the Home Office will begin engagement sessions in September 2022 which focus on the Matthews pensions remedy. The aim is to discuss Matthews legislation and policy, Matthews and McCloud interaction and the proposed timeline. A Matthews Technical Working Group has also been set up to discuss any technical matters in relation to the Matthews remedy and the first meeting took place on 12 September 2022.

### **KEY CURRENT WIDER WORKFORCE ISSUES**

#### **Pay**

#### NJC for Local Government Services (Green Book)

19. 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.
20. The trade unions' claim for 2022/23 (usual settlement date 1 April), includes:
- A substantial increase with a minimum of £2,000 or the current rate of RPI (whichever is greater) on all pay points
  - COVID-19 recognition payment
  - A national minimum agreement on homeworking policies for all councils and the introduction of a homeworking allowance
  - An urgent review of all mileage rates currently applying
  - A review and update of NJC terms for family leave and pay
  - A review of term-time only contracts and consideration of retainers
  - A reduction in the working week (without loss of pay) to 35 hours (34 in London)
  - One additional day of annual leave.
21. The claim, received in June, was then the subject of regional employer consultation meetings at which authorities were also mindful of the difficult National Living Wage situation which is projected to increase by up to 20 per cent by April 2024 and the pressure that places on the current pay structure. The feedback informed national employer considerations and a [final offer](#) was made to the unions on 25 July:
- With effect from 1 April 2022, an increase of £1,925 on all NJC pay points 1 and above
  - With effect from 1 April 2022, an increase of 4.04 per cent on all allowances (as listed in the 2021 NJC pay agreement circular dated 28 February 2022)
  - With effect from 1 April 2023, an increase of one day to all employees' annual leave entitlement
  - With effect from 1 April 2023, the deletion of pay point 1 from the NJC pay spine
22. Fire and rescue authorities and services have been kept up to date on pay negotiations and also National Living Wage issues. Some chose to attend the pay briefings organised by the regional employer organisations.

23. The unions are currently seeking the views of their respective memberships. It is expected that a response to the claim will be received at the end of October 2022.

NJC for Local Authority Fire and Rescue Services

24. 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.
25. The pay claim for 2022-3 was circulated to FRA/Ss via circular [EMP/1/22](#).
26. As it transpired, all the issues set out in the letter had been part of employers' side discussions with Chairs, Chief Fire Officers and Police, Fire and Crime Commissioners at the three well attended consultation meetings in May. CFOs were also invited to attend. Information in respect of affordability was provided by attendees and it was clear that, whilst FRAs may wish things were different, affordability remained a key factor.
27. Members of the employers' side of the NJC considered all relevant factors, including feedback from the recent consultation meetings and the advice of its Advisory Forum. A 2 per cent offer with effect from 1 July 2022 was made. The offer was not conditional on any other changes. Furthermore, going forward, the employers' side indicated it was open to exploring further the other points within the claim. The employees' side subsequently rejected the offer and indicated that, if necessary, it would prepare for industrial action.
28. Circular [EMP/1/22](#) included a copy of a National Employers' media statement (since updated), key messages and FAQs which would assist communications at local level and help to ensure a consistent approach. The NJC's media work is informed by a cross-organisation group of media specialists drawn from the LGA, WLGA, Scottish Fire & Rescue Service Board and the Northern Ireland Fire & Rescue Service Board. The information is kept under review and updated as and when appropriate.
29. Given affordability is, and will remain, a major consideration for the employers' side of the NJC it has made approaches, as appropriate, within all four stakeholder nations to see if additional funding can be secured. In terms of England specifically, an approach was made to the then Home Secretary. Discussion has taken place with officials and further information provided. The Home Secretary has now changed. We understand the new Home Secretary has been briefed and is also aware of the time pressures. The FBU's recent [circular](#) advising its members that it is now stepping up preparations for a ballot for strike action, should it feel such action is necessary, has reinforced our message on time pressures. If an improved offer can be made, it would clearly be better to do so before such a ballot commences.
30. Chairs, chief fire officers and police, fire and crime commissioners have been invited to attend one of two further pay consultation meetings taking place later this month.

NJC for Brigade Managers of Local Authority Fire and Rescue Services

31. 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. The employee representative body is the Fire Leaders Association. Its pay claim seeks 'an unconditional pay increase for all Brigade Managers, with effect from 1 January



2022, that is commensurate with all other fire and rescue staff in the UK'. Accordingly, the position for other fire and rescue staff will need to be clear before further negotiation can take place.

32. 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 for Brigade Managers did not run a survey last year. However, as things are returning to normal, we will shortly be issuing the next survey, which will cover a two-year period.

### **LGA, NFCC and APCC Core Code of Ethics**

33. The [Core Code of Ethics](#) has been promoted and welcomed across the groups the partnership bodies represent - NFCC, LGA and APCC - since its publication in May 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.
34. Following such widespread support, work has taken place, and is continuing to take place, to ensure the Core Code is adopted and embedded within all fire and rescue services in order to ensure consistency and delivery of improvements.
35. FRAs are expected to champion the Core Code and include in their scrutiny role its implementation and whether improvements sought are being delivered. Senior managers in each service were expected to ensure that as a first step a gap analysis was 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.
36. During November 2021, the partnership bodies jointly undertook several well attended workshops with fire and rescue services to complement initial awareness activities and to support adoption of the Core Code.
37. The partners recently ran further workshops with service leads focussing this time on progressing implementation and embedding the principles of the Core Code within services. The partners have also agreed that sharing of good practice going forward will be hosted through Workplace, which is operated by the NFCC and open to fire and rescue service employees working in this area. Partnership work will continue to support delivery of improvement.
38. The importance of governance bodies in delivering effective scrutiny in this area is recognised and it is intended to also run a workshop for FRA Chairs/PFCCs and/or FRA member leads on equality, diversity and inclusion.
39. Discussion is continuing with HMICFRS to understand their approach to inspection of the Core Code and to explore how that can best be approached in practice.



### **Fit for the Future**

40. Fit for the Future is a partnership piece of work involving the LGA, NFCC and the National Employers (England) to provide a common national sense of direction to the future of Fire and Rescue Services in England. The narrative and objectives were 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).
41. Following the engagement sessions with FRA Chairs, PFCCs, CFOs and other senior officers earlier this year, and further evidence since it was originally issued, Fit for the Future was revised, approved by each of the partner's governance arrangements and formally released on 30 June. It was also brought to the attention of HMICFRS and the Minister for Building Safety and Fire.
42. A separate document detailing the full evidence base to date is currently being prepared as it may also assist those taking forward the improvement objectives at local level.
43. Fit for the Future will be periodically reviewed to ensure it remains up to date.

### **Joint industrial relations relationship training**

44. As we increasingly return to business as usual, the NJC is once again receiving interest in its joint training for senior managers and unions representatives at local level, which focuses on recognising what is going well within that relationship and importantly what can be improved, identifying how the local parties will take that forward.

### **Implications for Wales**

45. 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 and the NJC for Brigade Managers.
46. 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.