

Meeting: Fire Services Management Committee

Date: 6 March 2023



Workforce report

Purpose of report

For information

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.

Is this report confidential? No

Recommendation/s

Members are asked to note the issues set out in the paper.

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Workforce report - FSMC



PENSIONS

Legal cases related to pension matters

1. 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.
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:
3. 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).
 - 3.1. 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).
 - 3.2. 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. Pending the legislation, which is expected to come in force on 1 October 2023, an Order in substantively the same form as the interim Order remains in place.
 - 3.3. The injury to feelings Employment Tribunal hearing which was scheduled to take place from 14 – 28 October was vacated, the parties having agreed provisional settlement arrangements.
 - 3.4. The injury to feelings claims were made as part of the Sargeant (age discrimination) litigation and are claims for compensation for non-financial loss.
 - 3.5. Vacation of the hearing followed agreement in principle as to issues of non-financial loss, and to provide further time to negotiate the full settlement details between all parties (including FRAs) through their respective legal representatives. In the case of

FRAs, approval will then be needed by the Steering Committee before final agreement is reached.

- 3.6. The compensation amounts are based on the established principles (often referred to as 'Vento' bands) and will have appropriate interest applied. The cost of compensation will be fully met by the Government, on the basis that FRAs are in funds before any payments are required to be made.
- 3.7. In respect of the claimants this applies to, it is all the named original 2015 claims in England and Wales brought by the FBU (but not claims in Scotland or Northern Ireland). This does not settle the further claims served last year, the Fire Officers' Association (Slater and Gordon) claims nor any of the reverse discrimination claims.
- 3.8. There still needs to be negotiation between the respective legal representatives on the details, including timescales and practicalities around making payments. The parties can apply for a tribunal hearing if matters are not fully resolved by 23 April 2023, so it is anticipated that discussions will be concluded by then. We continue to keep FRAs updated on any material developments through their nominated contacts.
4. 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.
 - 4.1. 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.
5. 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
 - 5.1. 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.
6. 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.
 - 6.1. 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.
7. Matthews & others v Kent & Medway Towns Fire Authority & others:
 - 7.1. 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.

- 7.2. 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.
- 7.3. 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.
- 7.4. 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.
- 7.5. 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.
- 7.6. 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:
 - i. their identity; and
 - ii. details of the factual and legal basis of any aggregation claims
- 7.7. 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. As resolution was not reached within this time, a number of claims were submitted and we proposed an approach to the collective defence of those claims.
- 7.8. As all FRAs agreed that they were content with the approach, a joint defence of the claims commenced, continuing to use DAC Beachcroft to represent FRAs on a cost sharing basis. A significant number of individual, and later group, claims were responded

to on this basis while DAC Beachcroft sought to secure a preliminary hearing to discuss the issues raised. DAC Beachcroft also sought for the requirement to file all other responses to be paused in the interim.

7.9. The Employment Tribunal judge granted this application in respect of claims in England and Wales, and the requirement to file responses has been stayed until at least 20 April 2023, the date the preliminary hearing is listed for. The equivalent claims in Scotland have been sisted pending the outcome in England and Wales.

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 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

9. The LGA continues to assist the Home Office with its 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.
10. The LGA has published a [Matthews Project Implementation Document](#) (PID) which sets out the scope, deliverables, and high-level timeline for the project. The PID also includes a communications plan and draft terms of reference for the Scheme Advisory Board working group.
11. There are a number of steps which FRAs should be taking now to establish the data needed to implement the second options exercise. We have issued a [factsheet on pre-work](#) that authorities can undertake before October 2023.
12. A consultation on the draft regulations is expected to take place commencing mid-March and lasting for 10 weeks.

Immediate Detriment Framework for McCloud/Sargeant type cases

13. The proposed amendments to the Framework remain with the respective legal representatives for agreement. The amendments would also require final approval from the Steering Committee before the revised Framework is published.
14. In the meantime, the technical guidance to FRAs has been updated to include clarity around the proposed treatment of contributions and add the technical/ practical issue and proposed resolution (if any), and potential risk and liability, to each element. At such point that the amendments to the Framework are agreed, the guidance will be updated to reflect those changes.
15. The Framework will also be reviewed in light of the publication of the Treasury Directions which were published on 14 December 2022.
16. 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.

17. In the meantime, we remain in continuous dialogue with the Government on potential alternative solutions.

HM Treasury Directions for Remedy

18. On 14 December 2022, HM Treasury (HMT) made the [Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions 2022](#). They came into force on 19 December 2022 and apply to England, Northern Ireland, Scotland, and Wales.
19. The Directions set out how certain powers in the Public Service Pensions and Judicial Offices Act 2022 must be exercised. The Act gives relevant government departments powers to rectify Sargeant/ McCloud discrimination by making secondary legislation.
20. Further detail can be found in the [HMT Remedy Directions coffee morning presentation](#).

Tax rules for 2015 Remedy laid

21. In November 2022, HMRC published a technical consultation on a draft statutory instrument, which would ensure that the pensions tax framework will apply as intended to pension scheme administrators and members affected by the public service pensions remedy.
22. Following that consultation, on 6 February 2023, [The Public Service Pension Schemes \(Rectification of Unlawful Discrimination\) \(Tax\) Regulations 2023](#) were laid. They apply to relevant public service pension schemes in England, Wales and Scotland and come into force on 6 April 2023, but some provisions will have retrospective effect.
23. The regulations setsout changes to how the pensions tax rules will apply to pension scheme administrators and members of public service pension schemes because of the 2015 remedy. The regulations make changes to how pensions tax legislation operates in certain circumstances, including changes to how schemes will need to report and pay extra tax charges or reclaim overpaid tax and ensure that schemes can pay pension benefits as authorised payments.

FPS Contribution Bandings for 2023-24

24. The [contributions banding factsheet](#) which confirms the contribution rates that apply for 2023-24 as set out in the scheme regulations is now available and confirms that there are no changes to the relevant rates for 2023-24.

Public Service Pension Indexation and Revaluation 2023

25. On 20 February 2023, HM Treasury (HMT) issued [written statement HCWS566](#) confirming the Public Service Pension Indexation and Revaluation for 2023.
26. Public service pensions will be increased in line with the annual increase in the Consumer Prices Index up to September 2022. The statement confirms that the increase from 10 April 2023 is 10.1 per cent. This will apply for FPS deferred pensions and pensions in payment.
27. The statement also confirms that the FPS 2015 will use the figure of 7 per cent for the earnings element of revaluation for active members to be applied at one second after midnight on 31 March 2023.

LGA staffing updates

28. Claire Hey is leaving the LGA on 23 April 2023. Recruitment for the Senior Pension Adviser role is ongoing, with interviews expected to take place on 13 March 2023.
29. We are delighted to announce that Tara Atkins has been appointed to the Pensions Team in the role of Firefighters' Pensions Adviser (Communications) and will join the LGA on 20 March 2023.
30. Tara has over 23 years' public service pension experience, including the LGPS, Police, Teachers, NHS, and Firefighters' Pension Schemes. Tara commenced Local Government employment in July 1999 at West Sussex County Council, where she commenced in the Pensions Administration Team, working her way up to Team Leader until she moved into the County Council's Subject Matter Expert Role in 2012, when the Administration Team were outsourced to a third party.
31. Tara's role at the LGA is to provide support to FRAs and FPS practitioners and she will lead the development of national FPS communications.

SCHEME ADVISORY BOARD (SAB)

SAB meeting 23 January 2023

32. The SAB last met on 23 January 2023 and discussed the following areas:
 - 32.1. Temporary in the context of the FPS
 - 32.2. Retrospective correction of pensionable pay
 - 32.3. PDD engagement sessions to date
 - 32.4. Remedy timetabling
 - 32.5. Commutation in the FPS 1992 Scotland
 - 32.6. HMRC tax consultation
33. Additionally, the SAB were pleased to invite Angela Bell and Lucy Stone from The Pension Regulator to the meeting to give an [update on pension dashboards](#).

SAB remedy engagement sessions

34. 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 PSPJOA 2022 for each area of the 2015 Remedy.
35. One session is taking place per month between June 2022 and February 2023, with two topics discussed at each meeting. These discussions will help to inform the drafting of secondary legislation, ahead of formal consultation. Formal consultation is now expected to commence during February 2023.
36. The most recent session considered Annual Allowance and bereavement.

KEY CURRENT WIDER WORKFORCE ISSUES

Pay

NJC for Local Government Services (Green Book)

37. 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. The usual pay settlement date each year is 1 April.
38. The [claim](#) for 2023 covers:
 - 38.1 RPI (10.70 per cent¹) + 2.0 per cent on all pay points
 - 38.2 Consideration of a flat rate increase to hourly rates of pay in order to bring the minimum rate up to £15 per hour within two years
 - 38.3 A review and improvement of NJC terms for family leave and pay
 - 38.4 A review of job evaluation outcomes for school staff whose day-to-day work includes working on Special Educational Needs (SEN)
 - 38.5 An additional day of annual leave for personal or well-being purposes
 - 38.6 A homeworking allowance for staff for whom it is a requirement to work from home
 - 38.7 A reduction in the working week by two hours
 - 38.8 A review of the pay spine, including looking at the top end, and discussions about the link between how remuneration can be used to improve retention
39. In response the employers' side of the NJC for Local Government Services, which once again has had to take into account the National Living Wage pressures, decided to make the following one-year (1 April 2023 to 31 March 2024), full and final offer to the unions representing the main local government NJC workforce:
 - 39.1. With effect from 1 April 2023, an increase of £1,925 (pro rata for part-time employees) to be paid as a consolidated, permanent addition on all NJC pay points 2 to 43 inclusive.
 - 39.2. With effect from 1 April 2023, an increase of 3.88 per cent on all pay points above the maximum of the pay spine but graded below deputy chief officer (in accordance with Green Book Part 2 Para 5.42)
 - 39.3. With effect from 1 April 2023, an increase of 3.88 per cent on all allowances (as listed in the 2022 NJC pay agreement circular dated 1 November 2022)
40. A copy of the full [response](#), which also covers the other points in the claim, has been circulated to FRAs.

NJC for Local Authority Fire and Rescue Services

41. 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.

42. The pay claim for 2022-3 was circulated to FRA/Ss via circular [EMP/1/22](#) at the end of June.
43. During negotiations updates have been provided to FRAs and FRs through a series of communications including meetings with FRA Chairs, Police, Fire and Crime Commissioners and chief fire officers. Additional information has been provided including an employers' media statement (updated when appropriate), key messages and FAQs to 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 and the Northern Ireland Fire & Rescue Service. The information is kept under review and updated as and when appropriate. Furthermore, [advice](#) was provided in respect of preparation for, and if necessary, during industrial action.
44. Previous reports to the Fire Services Management Committee have set out the various points of consideration as the negotiation has progressed. The current position is that a further [offer](#) was made to the employees' side of the NJC on 8 February:

- A 7 per cent increase on all basic pay rates and Continual Professional Development payments with effect from 1 July 2022
- A 5 per cent increase on all basic pay rates and Continual Professional Development payments with effect from 1 July 2023

In addition, the employers' side of the NJC remained committed to exploring the additional points in the claim proposing a way forward on each – pay progression and use of the continual professional development scheme/payments, control staff pay differential, retained duty system pay and reward and new roles.

45. The Fire Brigades Union is currently consulting its members alongside a recommendation to accept the offer and also committed to not providing notification of strike dates to FRAs during the consultation period, which it had originally intended to do on 9 February. The consultation closes on 6 March.

NJC for Brigade Managers of Local Authority Fire and Rescue Services

46. 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 originally sought '...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'. The claim has since been clarified and revised on 26 January to focus solely on Grey Book employees as a comparator group and that '...any multi-year offers made to such employees should also be offered to this (Gold Book) senior manager group of employees.'
47. The Gold Book provides a two track approach to pay:
- '10. There is a two-track approach for determining levels of pay for Brigade Manager roles. At national level, the NJC shall review annually the level of pay increase applicable to all those covered by this agreement. In doing so, the NJC will consider affordability, other relevant pay deals and the rate of inflation at the appropriate date. Any increase agreed by the NJC will be communicated to fire authorities by circular.

11. All other decisions about the level of pay and remuneration to be awarded to individual Brigade Manager roles will be taken by the local Fire and Rescue Authority, who will annually review these salary levels. ‘

48. Discussions have taken place with the FLA on a potential national pay award and updates periodically provided to FRA Chairs and Police, Fire and Crime Commissioners. At the time of writing this report a further meeting of the joint secretariat (the lead negotiators for each party) is planned. The National Employers will meet again shortly thereafter to consider the outcome of those discussions and the registration of a trade dispute by the Fire Leaders Association (which is the only employee representative body on this National Joint Council).

LGA, NFCC and APCC Core Code of Ethics

49. 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 2021. 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.
50. 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.
51. Since release of the Core Code the partnership bodies have jointly undertaken several well attended workshops with fire and rescue services, initially to complement awareness activities and to support adoption of the Core Code. Workshops then moved on to 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 and a workshop will take place at the Fire Conference on 7 March.
52. In its most recent State of Fire report HMICFRS said it was ‘encouraged by the progress many have made in implementing this (the Core Code)’. It also indicated it would continue to consider how well services have adopted the Core Code of Ethics for Fire and demonstrate it in their cultures in its third round of inspections.

Minimum service levels

53. The Strikes (Minimum Service Levels) Bill, covering England, Wales and Scotland, provides a power for the Secretary of State to specify in regulations the relevant services, which are subject to ‘minimum service regulations’. This includes fire and rescue services.
54. The government proposals set out the essential services that it considers the MSL should cover, and it is seeking views and options on how it could be applied. For fire and rescue services, it proposes to implement an MSL that would focus on public safety as well as ensure that firefighters are operating at safe levels when numbers are reduced due to strike action. This MSL will be introduced to FRSs to ensure that crews can respond to incidents to sustain the safety of the public during strike periods. It argues that MSLs would ensure that the employers are able to plan for adequate staffing cover to be maintained for emergency response and that employers will be able to do this through issuing work notices to appropriately trained staff irrespective of their membership of a union.

55. The [consultation](#), which closes on 3 May, seeks views on:
- 56.1 appropriate MSL which should apply during strike action in relation to FRSs.
 - 56.2 the relevant services provided by FRSs' workforces to which the MSL should apply.
 - 56.3 how to reasonably mitigate risk where possible to ensure public safety whilst maintaining workers' rights.
56. The main focus is on Grey Book employees with the consultation indicating it is less likely that Green Book would be subject to an MSL. Gold Book staff could be subject to an MSL.
57. The intention of UK government is that MSLs will also apply to a number of other workforces for example health, education and transport. The original LGA intention had been for the Resources Board to prepare a single general response. However, the UK government has now decided to issue separate consultations.
58. Many of the questions in the fire and rescue sector consultation, not unsurprisingly, are operational in nature. Accordingly, it is suggested that:
- 59.1 officers prepare a letter in response to the fire and rescue sector consultation, for consideration by lead FSMC members which would then go to the Resources Board for clearance and consistency of approach
 - 59.2 the letter would comment upon general matters particularly in connection with the relationship between employers and their workforces and employer responsibilities. This could cover concerns such as those from an employment law perspective covering legal risk and potential costs to employers, as well as the potential effect on the working relationship from an industrial relations perspective
 - 59.3 discussion take place with the NFCC to ideally share draft responses with the intention of supporting respective responses where possible to do so.

Implications for Wales

59. 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.
60. The remaining pension matters do not apply to Wales as Firefighters' Pensions are devolved to Welsh Government.
61. 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 exception in this report is the Core Code of Ethics which applies in England only. The WLGA is also one of the four employer stakeholder bodies on the NJC for Local Authority Fire and Rescue Services and the NJC for Brigade Managers.

Financial Implications

62. There will be financial implications for FRAs in respect of the pay awards referred to.
63. There will be financial implications arising from the legal remedies in Sargeant and Matthews in the following areas: administration, software, legal, and operational costs. Representations

will continue to be made to the Government to seek to recover all costs arising as a direct result of the remedies.

Equalities implications

64. Equalities issues are central to the McCloud/Sargeant litigation.

Next steps

65. The pension and wider workforce issues will continue to be progressed as set out above.