

Workforce Report

Purpose of Report

For information.

Is this report confidential? No

Summary

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

LGA Plan Theme: Support to the LG Workforce

Recommendation(s)

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

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Background

1. This report updates the FSMC on matters in relation to fire service industrial relations and pension matters and briefly describes the main industrial relations and pension issues at present.

PENSIONS

Legal cases related to pension matters

2. 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.
3. The details of each category have been covered in previous reports. Therefore, each category is covered in short below, together with the current positions:
4. 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).
 - 4.1. 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).
 - 4.2. 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.

- 4.3. 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.
 - 4.4. The injury to feelings claims were made as part of the Sargeant (age discrimination) litigation and are claims for compensation for non-financial loss.
 - 4.5. 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.
 - 4.6. 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.
 - 4.7. 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.
 - 4.8. There have recently been negotiations between the respective legal representatives on the details, including timescales and practicalities around making payments. The parties could apply for a tribunal hearing if matters were not fully resolved by 28 April 2023. However, rather than applying for a hearing the parties have recently requested a two-month extension to the deadline, and they are finalising wording for an agreement to progress the settlement. We continue to keep FRAs updated on any material developments through their nominated contacts.
5. 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.

- 5.1. 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.
6. 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
 - 6.1. 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.
7. 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.
 - 7.1. 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.
8. **Matthews & others v Kent & Medway Towns Fire Authority & others:**
 - 8.1. 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.
 - 8.2. 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.

- 8.3. 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.
- 8.4. 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.
- 8.5. 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.
- 8.6. 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:
- 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. 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.

- 8.7. 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.

8.8. The Employment Tribunal granted this application in respect of claims in England and Wales, and the requirement to file responses had been stayed until at least 20 April 2023, the date a preliminary hearing was listed for. The stay has now been extended until 8 September 2023 and the hearing has been postponed. The equivalent claims in Scotland have also been stayed pending the outcome in England and Wales.

9. 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

10. 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.
11. 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.
12. 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.
13. A [consultation on the draft regulations](#) was launched on 31 March 2023 with a response deadline date of 8 June 2023.

Immediate Detriment Framework for McCloud/Sargeant type cases

14. 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.
15. 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.

16. The Framework will also be reviewed in light of the publication of the Treasury Directions which were published on 14 December 2022.
17. 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.
18. In the meantime, we remain in continuous dialogue with the Government on potential alternative solutions.

Consultation on the Firefighters' Pension Schemes' (Remediable Service) Regulations 2023

19. On 28 February 2023, the Home Office launched its consultation on the Firefighters' Pension Schemes' (Remediable Service) Regulations 2023.
20. These regulations concentrate on the retrospective elements of the 2015 Remedy that are required to fully deliver the remedy. This includes establishing the deferred choice underpin (DCU) and the changes needed to offer pensioners and beneficiaries of deceased scheme members an immediate choice between legacy or reformed scheme benefits.
21. The consultation closes on 23 May 2023.

SCAPE Discount Rate Methodology Consultation Response

22. In June 2021 a public consultation on the discount rate (the "SCAPE rate") methodology had been launched. The Superannuation Contributions Adjusted for Past Experience (SCAPE) discount rate is a discount rate used in the valuation of unfunded public service pension schemes to set employer contribution rates.
23. The consultation sought views on the appropriate methodology for setting the discount rate used in scheme valuations. The consultation closed on 19 August 2021.
24. On 30 March 2023, the UK Government announced the [publication of its response](#) to the June 2021 consultation on the methodology used to set the SCAPE discount rate and has concluded that the existing methodology used to set the SCAPE discount rate and has concluded that the existing methodology

best meets the balance of the Government's objectives for the SCAPE discount rate, and therefore does not intend to modify the methodology.

25. The SCAPE discount rate to be used as part of the ongoing 2020 valuations will therefore be based on the expected long-term Gross Domestic Product growth figures, published by the Office for Budget Responsibility in July 2022. Based on these figures, the new SCAPE discount rate is CPI + 1.7 per cent p.a.
26. In recognition of the impact this announcement will have on the employer pension contribution rate, and following close work across Home Office, Government Actuary's Department and the Treasury, HMT has agreed additional funding for 2024/25. Agreeing this funding principle provides fire authorities with certainty with which to take important operational decisions and manage their budget for 2024/25.
27. The commitment covers the net outcome (on the employer contribution rate) of the 2020 valuations. That means, if the employer contribution rate payable from April 2024 is equal to or lower than the current employer contribution rate plus the isolated SCAPE impact, the increase from the current rate will be covered in full.
28. If the employer contribution rate payable from April 2024 is higher than the current employer contribution rate plus the isolated SCAPE impact, the additional funding will match the isolated SCAPE impact only. As there are some scenarios where the latter may apply to the Fire scheme, the Home Office has secured a commitment from HMT that pensions pressure should not create an operational risk for fire. The Home Office and HMT will continue discussions on any outstanding pressure in 2024/25 for FRAs once the Government Actuary's Department have completed the valuations.
29. The initial assessment that the Home Office have undertaken, with the advice of their actuaries, indicates that there may be additional costs on FRAs in 2024/25 because of the changes to the employer contribution rate. This is because, based on their initial assessment, there are some scenarios where the funding commitment from HMT is likely to cover the full impact on FRAs in 2024/25 and there are some scenarios where the funding commitment will cover the majority, but not the full, impact on FRAs in 2024/25.
30. The Home Office will continue to work with their actuaries and with HMT in order that any additional cost pressures on FRAs will be considered in the Local Government Finance Settlement for 2024/25 which will take place in December 2023.

LGA staffing updates

31. Claire Hey left the LGA on 23 April 2023. Recruitment for the Senior Pension Adviser role has taken place and the successful applicant was Claire Johnson. As Claire is currently on maternity leave, Elena Johnson has been appointed as Acting Senior Pension Adviser for the interim period.

Scheme Advisory Board (SAB)

SAB meeting 23 March 2023

32. The SAB last met on 23 March 2023 and discussed the following areas:

- 32.1. The spring budget 2023
- 32.2. Matthews second options exercise
- 32.3. 2020 valuation
- 32.4. Home Office retrospective remedy consultation

SAB membership

33. Cllr Leslie Byrom has been nominated to replace Cllr Leigh Redman as the Labour representative. Ministerial approval of the nomination is awaited.

KEY CURRENT WIDER WORKFORCE ISSUES

Pay

34. NJC for Local Government Services (Green Book)

- 34.1. 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.
- 34.2. The claim for 2023 covers:
 - 34.2.1 RPI (10.70 per cent) + 2.0 per cent on all pay points
 - 34.2.2 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
 - 34.2.3 A review and improvement of NJC terms for family leave and pay
 - 34.2.4 A review of job evaluation outcomes for school staff whose day-to-day work includes working on Special Educational Needs (SEN)
 - 34.2.5 An additional day of annual leave for personal or well-being purposes
 - 34.2.6 A homeworking allowance for staff for whom it is a requirement to work from home
 - 34.2.7 A reduction in the working week by two hours

- 34.2.8 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
35. 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 in February to the unions representing the main local government NJC workforce:
- 35.1. 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.
- 35.2. 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)
- 35.3. 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)
36. The [employers' full response](#) also covered the other points in the claim.
37. At a further meeting in March at which the unions sought a 'significant improvement' to the £1,925 / 3.88 per cent headline offer, the National Employers rejected the unions' request and reaffirmed the offer as full and final.
38. The national committees of all three unions rejected the employers' final offer. UNISON announced a ballot for industrial action which will commence on 23 May and run until 4 July. GMB and Unite decided to consult their members on the basis of a recommendation that the offer be rejected.
39. Unite's 'Green Book' members have since voted 75% to 25% to reject their pay offer. Of those who voted, 90% voted in favour of moving to a formal ballot for industrial action. Unite now plans to conduct a formal ballot for industrial action, which is expected to run on a timetable similar to UNISON's strike ballot. GMB has recently announced that its members have rejected the LGS 'Green Book' pay offer by 64% to 36%. GMB added, "If negotiations aren't reopened and a revised offer made, we will move to industrial action ballots in some areas."

NJC for Brigade Managers of Local Authority Fire and Rescue Services

40. 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 was since 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.’

41. 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.
42. 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. ‘
43. Following detailed negotiations, the National Employers made an offer in March:
 - 43.1 A 4 percent increase on basic pay with effect from 1 January 2022, capped at £5000.
 - 43.2 A 3.5 percent increase on basic pay with effect from 1 January 2023, capped at £4000.
44. Following rejection of the offer, a revised offer was made later in the same month, removing the previously proposed caps:
 - 44.1 A 4 percent increase on basic pay with effect from 1 January 2022
 - 44.2 A 3.5 percent increase on basic pay with effect from 1 January 2023
45. A joint lead members meeting was held earlier this month. A response to the revised offer is awaited.

Minimum Service Levels

46. 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.

47. The government proposals set out the essential services that it considers the MSL should cover. Feedback at the last FSMC meeting, and from FSMC lead members thereafter on the draft letter, informed the LGA's Resources Board response to the consultation (**Appendix A**).

Culture in the Fire and Rescue Service

48. Agenda item 6 covers this matter more broadly. As part of the approach set out in that report the Workforce team will be:
- 48.1 working together with Policy team colleagues on delivery of a free, one-day conference for members looking at their governance and leadership role in equality, diversity, and inclusion, alongside their employer role. The conference, planned for 27 June, will be a mix between discussion and practical training sessions including the role of scrutiny, relevant employment law and related legal framework.
 - 48.2 reconvening the Inclusive Fire Service Group. This independently chaired, National Joint Council led, group has previously undertaken a substantial amount of work on these areas, identifying many of the same problems as HMICFRS and developing improvement strategies, which if fully supported and implemented, would have already led to improvements. While a [monitoring report](#) in 2021 identified progress at local level, it was slow. This UK-wide group is unique in the fire service in that it is comprised of employer and employee interests on the NJC, senior managers (NFCC) and employee representative bodies (FBU, FOA, FRSA). It is therefore well-placed to hear all voices, taking on board all views to maximise buy-in at all levels.
 - 48.3 will continue to work within the Core Code of Ethics partnership (LGA, APCC, NFCC) to support FRA/FRSs in embedding the Core Code and delivering improvements.

Fit for the Future

49. Members will be aware of the joint initiative by the LGA, National Employers (England) and NFCC - Fit for the Future. It covers a broad spectrum of issues, for example reform.
50. A joint bid has been made to the Home Office seeking funding for two specialist posts, which would sit within the LGA. The postholders would be able to provide specialist advice on industrial relations and employment law to FRA/FRSs over and above that currently provided by the LGA in a national context in order to support delivery of reform at local level.
51. The Fit for the Future improvement objectives, which were the result of wide consultation with FRAs and FRSs, are evidence-based. Accordingly, the next

review will consider any amendments or additions required following the HMICFRS spotlight report into values and culture in the fire and rescue.

NJC for Local Authority Fire and Rescue Services

52. Alongside the two-year pay settlement reached in March 2023, the National Employers responded to each of the other aspects of the claim, which included two joint working groups:
- 52.1 Retained Duty System firefighters:
Firefighters employed on the retained duty system are an important part of the workforce. It is proposed that both parties commit to a joint working group to include review of the retained duty system pay and rewards package. Membership of the group and a schedule of dates should be agreed as soon as possible once the current pay award negotiations are concluded with the intention of the joint working group concluding its work within 8 months.
- 52.2 Pay progression:
The employers' side of the NJC is content to continue discussions around pay structure and progression. It is proposed that both parties commit to a joint working party commencing as soon as possible once the current pay award negotiations are concluded with the intention of the joint working party concluding its work within 8 months.
53. Both joint working groups have now begun work. It has been agreed that the Pay Progression joint working group will also consider use of the continual professional development scheme.

Financial Implications

54. 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.
55. Any cost implications will also need to be included in the work of the NJC's joint working groups.

Equalities implications

56. Equalities issues are central to the McCloud/Sargeant litigation and will also be taken into account in wider workforce issues.

Next steps

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

APPENDIX A



From the Chair of the LGA Resources Board
Cllr Peter Marland

2 May 2023

Minimum Service Levels FRSs Consultation
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Sent to: FRSMinimumServiceLevels@homeoffice.gov.uk

Minimum Service Levels for Fire and Rescue Services – Response to Consultation

This correspondence from the Local Government Association (LGA) relates to the Home Office consultation on Minimum Service Levels (MSLs) in the Fire and Rescue Services (FRSs), published on 9 February 2023.

The LGA is the national voice of local government and our members include councils and fire and rescue authorities (FRAs). We work with councils and FRAs to support, promote and improve local government. We are a politically-led, cross party organisation which works on behalf of councils and fire and rescue authorities, PFCCs and Deputy Mayors for fire, who are members of the LGA, to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on issues that matter most to councils and FRAs so they are able to deliver local solutions to national problems. The LGA covers every part of England and Wales, supporting local government as the most efficient and accountable part of the public sector.

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The LGA also provides the secretariat for the employers' side of the National Joint Council for Local Authority Fire and Rescue Services (NJC), the national representative body for fire and rescue service employers. The NJC is a UK wide body and we note that this consultation does not relate to Northern Ireland and may apply differently in Scotland and Wales which presents an inconsistent position which will need to be recognised and accommodated.

The consultation questions issued by the Home Office primarily relate to operational matters on which the NFCC is better placed to respond. However, the wider context of industrial relations in the fire and rescue sector is fundamentally affected by the Home Office's proposals on minimum service levels and we do wish to take this opportunity to raise our observations on likely consequences.

The fire and rescue sector, through the NJC, has successfully agreed pay and conditions changes without national industrial action for 20 years. The last national strike action was in 2013/14 concerning a dispute with government about changes to the pension scheme. As the employers of fire and rescue staff we are directly impacted by the decision to impose regulations on the conduct of industrial action in the sector. To date, industrial action, and its impact on the public, has primarily been managed in two ways. Firstly, by achieving negotiated outcomes to disputes with the recognised representatives of our employees over pay and all other areas of terms and conditions over which employers have control. In this we have been very successful compared with other sectors. The only area in recent years where there has been national industrial action related to pension reform and decisions made by the Home Office and HM Treasury over which employers had no control. The second mitigation approach is to reach agreements with the relevant trade union/s (usually the FBU but UNISON, GMB and others also represent various sections of the FRS workforce) on exemptions and return to work triggers in the event of strike action. Generally, these are both national, as was agreed earlier this year when the FBU secured a mandate for strike action; and local, to reflect the particular circumstances of each FRS in implementation. The LGA is deeply concerned that by introducing legislation in this area, the potential for appropriate management of services during strike action will be more limited as the context for dialogue between employers and unions is immediately more oppositional than has historically been the case.

It is important that Home Office understands that the tension between employers and employees, reflected by their trade union representatives (we estimate at least three quarters the workforce are members of a trade union), will cause a deterioration of industrial relations in the sector. This is already evident in the public statements of many trade unions, including those in the fire and rescue sector.

As strike action is the result of a legal dispute between trade unions and employers, it is imperative that fire and rescue sector employers, locally and nationally, are sighted on and, where appropriate, have involvement in, any implementation of MSLs Regulations. While it is

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appropriate for local operational needs to have a high level of priority when setting MSLs, there should be broad engagement of those who have a governance responsibility in a Chief Fire Officer's deliberations.

The introduction of Regulations in this area will cause inconsistency across the UK and within the NJC as the Regulations do not apply in Northern Ireland and the Scottish First Minister has been clear that they will not be acted upon in Scotland. Customarily the FBU (who are the primary representatives of firefighters) conducts 'national industrial action' on a UK-wide basis. Currently there are differences in ballot thresholds within the UK but that has not been an issue in the sector as the FBU has always exceeded those requirements across the UK. These Regulations will mean the conduct of industrial action will differ within the UK and this may not be a positive dynamic when seeking to resolve a dispute. In practical terms, this will also introduce a new level of challenge and uncertainty in relation to cross border working which will be an issue for some FRSS.

In terms of wider governance issues, the LGA believes it should be for local areas to decide how they should be governed, and there should be no mandatory transfers of governance. As with levelling up, real change and improvement within the sector and communities will be more successful if local councils and fire and rescue authorities are empowered to decide what their local governance structure will be, based on the needs of their communities. Therefore, transfers of governance should only take place where there has been local agreement to and support for the transfer. Local support for any change of governance should be the principal basis for making any determination on the future of the service, therefore empowering local decision makers. The implementation of the MSLs Regulations should not alter the existing governance arrangements and in particular how the employment relationship is managed.

Customarily, to address the balance between the right to strike and reducing risk, agreements have been reached between the National Employers and the Fire Brigades Union (through the NJC) to provide cover allowing striking fire personnel to be exempted from strike action by the union so they can respond to any major incident. This has occurred for disputes both with the National Employers and those with government and with sufficient time to ensure arrangements are in place prior to any such action. Such agreements allow available people, equipment and resources to respond to such incidents in a safe and co-ordinated way. While voluntary in nature, experience has shown such agreements to be effective during the national strike action as part of the dispute with government on pension reform. The similar arrangements put in place more recently were not in the end required as the dispute related to pay was resolved within the NJC without FBU members commencing strike action.

The principles having already been agreed nationally, it is then a matter of expeditiously putting in place a local practical procedure to ensure implementation. The Chief Fire Officer determines the resources necessary to attend such incidents. Where a major incident would

require the deployment of National Resilience assets, the FBU would also exempt from strike action those of its members who are specifically trained and deal with that particular asset in another fire and rescue service as part of their normal duties. The LGA is concerned that these type of agreements at local and national level will not be possible if the MSLs Regulations are applied. Given the scope of the NJC, this will cause new challenges for other parts of the UK. It would be useful for the LGA to be aware of what discussions the Home Office is having with devolved administrations in regard to the application of this legislation. A further point for consideration is business continuity contracts that some FRA's have in place to ensure a level of service during industrial action. It is not clear from the consultation how the Home Office sees these operating in the future and how the MSL process might interact with these existing arrangements, further discussion of this would be appreciated.

The LGA is concerned that the Regulations will expose FRSs to increased legal risk and cost as MSL work notices may well be legally challenged by trade unions, both on principle and on detail of the contents of and operation of individual notices. This would also place FRSs in a precarious position of uncertainty that the current voluntary agreement approach has, to date, successfully avoided. The additional cost and time that would be involved in legal proceedings would both be a distraction at a self-evidently challenging time and a cost for which FRAs do not necessarily have provision. At the heart of the employment relationship is the contract of employment which governs matters such as what remuneration and recompense the employee is entitled to for their employment and what the employer can expect in terms of work undertaken. It is important that the Regulations and their operation do not seek to extend and/or breach that contract by requiring staff to do work they are not normally expected to do. Further the Regulations and their operation must not result in any breach of other statutory requirements such as under the Working Time Regulations 1998. Finally, it is also important that the Regulations, and their operation, are conducted in a fair manner that does not result in less favourable treatment of any member of staff related to any of their protected characteristics under the Equality Act 2010. In light of the recent report from His Majesty's Inspectorate relating to the culture of the fire and rescue sector, this issue should be given very serious consideration.

There are a number of areas where the consultation is unclear in its intention and scope. For example, the consultation does not set out details about any application of MSLs for a dispute that is local to a FRS, and does not have national implications. The legislation will need to be clear to which it applies, or both, in order for the necessary business continuity arrangements to be established and applied as necessary. It is also imperative that there is clear guidance to these Regulations and that the LGA and other key stakeholders are involved in the drafting of that guidance.

The LGA believes that in order to succeed, it would be imperative for any MSLs to be introduced in a clear and proportionate way that meets the government's objectives on public safety in practice; causes the least disruption to industrial relations where it is working

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positively; and protects employees' right to strike where a valid trade dispute exists. If any of these elements are missing, maintenance of the public's confidence in the fire and rescue sector is at risk and the LGA is keen to avoid such a situation.

Should the Home Office proceed with the introduction of MSLs the LGA would appreciate being engaged at the earliest possible opportunity to ensure Regulations are workable and achieve the government's desired balance between ensuring public safety and the employees' right to take industrial action.

Yours sincerely

Cllr Peter Marland

LGA Resources Board Chair