



**NOTTINGHAMSHIRE**  
**Fire & Rescue Service**  
*Creating Safer Communities*

Nottinghamshire and City of Nottingham  
Fire and Rescue Authority

# RETAINED FIRE-FIGHTER PENSIONS

Report of the Chief Fire Officer

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**Agenda Item No:**

**Date:** 25 May 2012

**Purpose of Report:**

To bring to the attention of Members the potential human resources and financial implications of the outcome of the Retained Fire-fighters Employment Tribunal which grants retrospective access to the Fire-fighter's Pensions Scheme.

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## **1. BACKGROUND**

- 1.1 On behalf of its retained members, the Fire Brigade's Union (FBU) brought forward claims through the Employment Tribunal system under the Part-time Worker (Prevention of Less Favourable Treatment) Regulations 2000 against their Local Government employers and the Secretary of State for Department of Communities and Local Government (DCLG).
- 1.2 The specific claim against the employers related to their members' terms and conditions of employment (the Terms and Conditions claim), whilst the claim against the Secretary of State related to their members' pensions (the Pension claim).
- 1.3 On 8 March 2011, an agreement was reached between the employers and the FBU in relation to the Terms and Conditions claim. A report relating to this with the associated implications was submitted to the Human Resources Committee at its meeting of 22 July 2011 (Appendix A). The agreement, however, did not extend to the pension claim – although the judgement did find in favour of settlement between DCLG and the FBU. This report seeks to update Members as in the current position and the potential financial implications which may affect the Fire Authority.

## **2. REPORT**

- 2.1 On 14 May 2012, the Fire Services Management Committee of the Local Government Association (LGA) received an update report with regard to the settlement of the pension claim. DCLG have been in negotiation with the FBU on retained fire-fighter pensions in line with the outcome of the employment tribunal (ET) which grants retrospective access to the Fire-fighter's Pension Scheme.
- 2.2 Although the Fire-fighter's Pension Scheme (1992) was closed in 2006, it appears that DCLG are working on a proposal that all fire-fighters with retained service between 1 July 2000 and 5 April 2006 will be eligible for some kind of special membership of the new scheme.
- 2.3 To enable this to occur, an amendment order will have to be agreed by Ministers and Parliament. Section 34 of the Fire and Rescue Service's Act 2004 allows for this to occur and it is anticipated that DCLG will consult on such an order towards the end of summer 2012 for a period of 12 weeks. This will probably result in a change of legislation some time in early 2013.
- 2.4 The important aspect to note is that, at this stage, the employers have not been party to any of the negotiations to date that will inform the amendment order.
- 2.5 Of paramount importance to the Nottinghamshire and City of Nottingham Fire and Rescue Authority are the potential financial implications that may arise if

retained fire-fighters opt to buy-back their service through the amendment order arrangements. Liabilities should begin to emerge in the 2013/14 financial year.

- 2.6 In truth, the actual liability of the scheme will not be known until it is established how many retained fire-fighters will exercise the buy-back option. On a national scale, the Government Actuary Service (GAD) has estimated the total number of eligible staff could be 21,200 (this figure is arrived at by adding the total number of retained fire-fighters between 1 July 2000 and 5 April 2006, which was a constant of around 14,000 with an estimate of the number who left the service during that period and who would therefore be eligible to buy-back pensionable service).
- 2.7 GAD estimates that the balance of scheme liability nationally will be about £5million for every 1% of eligible retained fire-fighters who take up the option. At this stage Nottinghamshire Fire and Rescue Service will have no definitive knowledge of how many staff this may be.
- 2.8 The table below and associated comments give a national picture as to the liability against various rates of take-up:

<b>Percentage take-up by Retained Fire-fighters:</b>	<b>Estimated balance of scheme liability:</b>
10%	£50 million
25%	£125 million
50%	£250 million
75%	£375 million

- 2.9 The costs set out in the table above would imply an employer contribution rate of around 37% if the costs were spread over 10 years. This is substantially higher than the current rate of 21.3% which GAD justifies for the following reasons:
- the scheme in which the retained members are eligible to join has a different design to the FPS. This is likely to lead to a difference in the cost to employers;
  - the financial assumptions used in these calculations are not the same as those used in the 2007 valuation when the employer contribution rates were set. The financial assumptions adapted for these calculations are a discount rate of 3% net of pension increases and 0.75% net of salary increases;
  - calculations of the possible cost of back-dating membership for retained fire-fighters are very approximate and are only meant to provide an indication of the possible cost under certain scenarios. For example, GAD has assumed that no members withdraw from service. The funding valuation will have been calculated to a higher level of detail;

- The members eligible to buy-back service will not be representative of the scheme membership as a whole. Therefore the cost of providing pensions for such members is likely to be different to the overall scheme cost. In particular the eligible members are likely to be older than the average across the scheme. All else being equal, the cost of providing pension benefits of these members will be higher but no data is yet available to confirm this.

- 2.10 One of the key questions that remains to be answered with regard to this is where the actual liability rests. The exclusion of retained fire-fighters from the pension scheme had been a feature of legislation up until the introduction of the 2006 New Fire-fighter's Pension Scheme. Although both schemes are administered locally, policy has always been set centrally by Government, with decisions being taken by Ministers. Therefore there is a potentially strong case to argue that Government is liable.
- 2.11 Additionally Fire and Rescue Authorities (FRAs) have not been party to the negotiations over the details of the settlement that will implement the ET's judgement. Although there will have to be a statutory consultation it is not clear what impact employers may be able to have.
- 2.12 On behalf of FRAs the LGA is seeking legal advice on Government's liability for the balance of the scheme liability and also on whether it has been appropriate to exclude employers from the settlement agreement discussions in the event that the conclusion is to pass on the additional costs to FRA's.
- 2.13 Officers will continue to monitor the implications of this issue and update the Fire Authority as appropriate when more information becomes available.

### **3. FINANCIAL IMPLICATIONS**

The broader financial implications arising from this report are contained within the wider body of this report. At this stage it is difficult to place a direct implication in relation to Nottinghamshire Fire and Rescue Service alone. Officers will continue to assess this and will update the Fire Authority as and when a more detailed assessment is made.

### **4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS**

The requirement to comply with the outcomes of the terms and conditions claim has placed an additional workload on human resources staff which has been accommodated within the existing establishment. It is hoped that any pension amendment implications can be addressed in a similar manner although the scale of the impact is not known at this stage.

## **5. EQUALITIES IMPLICATIONS**

The claims have arisen through an Employment Tribunal submission under the Part-Time Worker (Prevention of Less Favourable Treatment) Regulations 2000. As this has been a national claim, any agreements will reduce the likelihood of further individual claims against Nottinghamshire Fire and Rescue Service.

## **6. CRIME AND DISORDER IMPLICATIONS**

There are no crime and disorder implications arising from this report.

## **7. LEGAL IMPLICATIONS**

The Service has a statutory responsibility to comply with the Regulations as well as the Equal Pay Act 1970.

## **8. RISK MANAGEMENT IMPLICATIONS**

- 8.1 The specific issue arising from this report is a financial one particularly if Fire Authorities are to be charged for the balance of the schemes liability. Financially these are how the costs should be distributed across Fire Authorities and any timescales for covering the costs.
- 8.2 In terms of this it is important to note that there is a variance of employment of retained staff across the country. Currently 12 Fire Authorities account for over 50% of the retained staff and some do not employ any. Under DCLG's latest published figures (2010/11) Nottinghamshire accounted for 2.11%.
- 8.3 If Fire Authorities are to cover their own employer contributions and this is to be based upon the percentage of retained staff employed, then the impact, based upon the GAD assessment, could be significant.

## **9. RECOMMENDATIONS**

It is recommended that Members:

- 9.1 Accept and note the potential implications of the outcome of current negotiations on the settlement negotiations between DCLG and the FBU;
- 9.2 Task the Finance and Resources Committee with allocating an earmarked reserve to address the potential liabilities within the 2013/14 budget process if greater clarity is available by that time.

**10. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)**

None.

Frank Swann  
**CHIEF FIRE OFFICER**



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Human Resources Committee

# **PART TIME WORKERS (PREVENTION OF LESS FAVOURABLE TREATMENT)**

Report of the Chief Fire Officer

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**Agenda Item No:**

**Date:** 22 July 2011

**Purpose of Report:**

To update Members on the ongoing national negotiations for equal treatment for Retained Duty System Firefighters

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## **1. BACKGROUND**

- 1.1 In 2001 the Fire Brigades Union (FBU) commenced a legal test case using the Part Time Workers (Prevention of Less Treatment) Regulations 2000. The basis of the case was that fire-fighters on the Retained Duty System (RDS) were not given equal access to pension and sick pay schemes.
- 1.2 Those test cases have been subject to the Employment Tribunal, Employment Appeal Tribunal, Court of Appeal and House of Lords processes returning finally at the request of the House of Lords to the original Employment Tribunal for reconsideration and determination.
- 1.3 The Tribunal subsequently found in favour of the RDS fire-fighters and since then National Employers and Representative Bodies have sought to negotiate a settlement.
- 1.4 Following a complex negotiation process, Nottinghamshire Fire and Rescue Service were informed of a pending settlement in two National Joint Circulars for Local Authority Fire and Rescue Services. These were issued on 13 April 2010 and the 17 June 2010. The National Employers also issued Circulars on the same days. National Joint Council Circular 3/11 confirmed that agreement had been reached in principle with the Fire Brigades Union on both a settlement and a mechanism to facilitate the withdrawal of cases.
- 1.5 Separate negotiations took place with the Retained Firefighters Union (RFU). Employers Circular 05/11 confirmed that an agreement had been reached with the RFU.
- 1.6 There is no material difference in terms of the agreements with the FBU and RFU.

## **2. REPORT**

- 2.1 The Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 came into force on 1 July 2000. They give part time workers the right not to be treated less favourably than a comparable full time worker.
- 2.2 In 2001 the FBU submitted 12 test cases, from 12,000 raised to an Employment Tribunal to test whether RDS fire-fighters were being treated less favourably than fire-fighters on the Wholetime Duty System (WDS). These claims are known as the 'Matthews' claims after the lead claimant. The RFU submitted a number of claims in 1994, under the Equal Pay Act 1970, though these were stayed pending the outcome of the Matthews claims.



- 2.3 The claims were initially rejected in 2002 at an Employment Tribunal, an Employment Appeal Tribunal and the Court of Appeal. However, the House of Lords, on appeal, subsequently ruled that retained and wholetime fire-fighters were employed under the 'same type of contract'.
- 2.4 The House of Lords ruled the original Employment Tribunal had mis-applied the law in determining that the work of retained and wholetime fire-fighters was not 'the same or broadly similar'. This part of the case was referred back to the Employment Tribunal for re-consideration in the light of the House of Lord's judgement.
- 2.5 In 2008 the final Tribunal found in favour of the claimants, concluding that fire-fighters on the Retained Duty System had been treated less favourably than fire-fighters on the Wholetime Duty System and therefore Fire Authorities were in breach of the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000.
- 2.6 After further discussions the National Employers and Representative Bodies have reached a final agreement to resolve the claim. Under the agreement a compensation payment is to be made to RDS fire-fighters employed between the prescribed period 1 July 2000 to 30 June 2010.
- 2.7 National Joint Council Circulars NJC 5/10 and NJC 2/10 outlined the maximum and minimum compensation payments. These are detailed below for information:

Maximum Payment

Watch Manager £806  
Crew Manager £778  
Firefighter £750

Minimum Payment

£150.

- 2.8 The compensation payment is pro rata to length of service, role and level of cover based on the date of the 30 June 2010.
- 2.9 A third party, Popularis, has been engaged as an independent third party to handle the process of communication between Fire and Rescue Services, the FBU, RFU and individual claimants. This overcomes any difficulties that would otherwise have arisen for both Fire and Rescue Services and the representative bodies of providing name and address details to each other.
- 2.10 Popularis will be responsible for undertaking a matching exercise and will advise current employees who were in post on 30 June 2010 and previously employed claimants who were RFU/FBU members of their individual settlement calculation. Payment will be made within a three month period and the Employment Tribunal cases withdrawn.

- 2.11 A number of amendments have been made to the National Joint Council Scheme of Conditions Service (Grey Book) following detailed negotiations between the respective parties to ensure compliance with the Regulations. National Joint Circular 04/11 outlined the amendments that had been made in relation to the NJC Scheme of Conditions of Service (Grey Book). This document has been attached at Appendix B for reference purposes.
- 2.12 Nottinghamshire Fire and Rescue Service is undertaking a full review of its procedures to ensure compliance with the changes that have been made to Grey Book.
- 2.13 The claims brought by the RFU between 1994 and 2000 under the Equal Pay Act are currently stayed and are not covered by the agreement reached in relation to the Part Time Workers claim. The National Employers will advise Authorities if they are able to assist with resolution of these cases in due course.
- 2.14 The remaining aspect of the Employment Tribunal case, that of Pension scheme access, remains subject to ongoing national negotiation.

### **3. FINANCIAL IMPLICATIONS**

In accordance with proper accounting practice, a provision of £224k was created in 2009/10 to account for the estimated cost of the compensation payments. Accurate compensation calculations have now been prepared and submitted to Popularis, and the total payment is expected to be in the region of £186k. The balance of the provision in the 2010/11 accounts will therefore be reduced, and the surplus amount will be charged to the 2010/11 Comprehensive Income and Expenditure Account. The compensation settlement payment will be charged directly to the provision, and any remaining surplus or deficit balance will be transferred to the Comprehensive Income and Expenditure Account in 2011/12.

### **4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS**

- 4.1 The Service is responsible for ensuring compliance with the outcome of the Part Time Workers claims, specifically in terms of changes made to Grey Book conditions.
- 4.2 The Human Resources Department are responsible for providing data to the independent third party to facilitate the payment of compensation awards to individuals.
- 4.3 The Service will need to respond to any advice provided by the National Employers in relation to the claims made by the RFU under the Equal Pay Act.

## **5. EQUALITY IMPACT ASSESSMENT**

The initial equality impact assessment has identified there are no equalities issues arising from this report. The agreement reached does have a positive impact for part time workers in terms of ensuring that they are not treated less favourably than full time employees.

## **6. CRIME AND DISORDER IMPLICATIONS**

There are no crime and disorder implications arising from this report.

## **7. LEGAL IMPLICATIONS**

The Service has a statutory responsibility to comply with the Part Time Workers (Prevention of Less Favourable Treatment Regulations) 2000 and Equal Pay Act 1970 and ensure that any outcome from the collective bargaining processes is implemented.

## **8. RISK MANAGEMENT IMPLICATIONS**

- 8.1 Failure to comply with the outcome of the nationally negotiated settlement would lead the Service open to Employment Tribunal claims of unfair treatment under the Part Time Workers (Prevention of Less Favourable Treatment Regulations) 2000.
- 8.2 The Service needs to ensure compliance with the equal treatment principle in terms of any local conditions of Service, benefits, training and other related employment practices to avoid future claims being lodged at an Employment Tribunal.
- 8.3 The Service may be subject to claims, made under the Equal Pay Act in relation to any unresolved claims made by the RFU during the period 1994 - 2000. These claims are currently stayed and the Service awaits further advice from the National Employers regarding possible options for resolution.

## **9. RECOMMENDATIONS**

That Members note the contents of this report.

## **10. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)**

None.

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**CHIEF FIRE OFFICER**