



NOTTINGHAMSHIRE
Fire & Rescue Service
Creating Safer Communities

Nottinghamshire and City of Nottingham
Fire and Rescue Authority
Human Resources Committee

PART TIME WORKERS (PREVENTION OF LESS FAVOURABLE TREATMENT)

Report of the Chief Fire Officer

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