

**M. Pearson
CLERK TO THE AUTHORITY**

**To: The Chair and Members of the
Human Resources Management and
Development Committee
(see below)**

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HUMAN RESOURCES MANAGEMENT AND DEVELOPMENT COMMITTEE
(Devon and Somerset Fire and Rescue Authority)

Wednesday 15 April 2009

A meeting of the Human Resources Management and Development Committee will be held on the above date, **commencing at 10:00 hours in the Conference Room at the Service Training Centre, Glen Road, Plympton** to consider the following matters.

M. Pearson
Clerk to the Authority

NOTES:

1. Committee Members are asked to please note the **venue** and start time for the meeting.
2. A copy of this agenda in large print format is available on request.

AGENDA

1. **Apologies**
2. **Minutes** of the meeting held on 22 January 2009 attached (Page 1).
3. **Items Requiring Urgent Attention**

Items which, in the opinion of the Chair, should be considered at the meeting as matters of urgency.

4. **Declarations of Interest**

Members are asked to consider whether they have any **personal/personal and prejudicial interests** in items as set out on the agenda for this meeting and declare any such interests at this time. *Please refer to the Note 2 at the end of this agenda for guidance on interests.*

PART 1 – OPEN COMMITTEE

5. **"Making The Connections" - Devon & Somerset Fire & Rescue Authority Single Equality Scheme 2009/10 To 2011/12**

At its meeting on 23 October 2008 the Authority considered and endorsed a first draft of a Corporate Single Equality Scheme – “Making the Connections” (Minute DSFRA/51 refers). The Fire and Rescue Service National Framework requires the Authority to implement the requirements of the Fire and Rescue Service Equality and Diversity Strategy and production of a single Equality Scheme is fundamental to this. Additionally, guidelines produced by the Equality and Human Rights Commission recommend the production of a single Equality Scheme encompassing all six strands of gender, race, disability, sexual orientation, age and religion/belief. These guidelines have been followed in developing a scheme for both the Authority and the Service and which will link to the Authority’s Corporate Plan, Service Area and Departmental Plans and the corporate response and improvement plan from the recent staff survey.

Since the October 2008 Authority meeting work has been progressing on production of the Single Equality Scheme and a final draft has now been produced, a copy of which has already been circulated to the Members of this Committee.

Head of Human Resources Management and Development to report.

RECOMMENDATION that the Committee considers the final draft of “Making the Connections” – Devon & Somerset Fire & Rescue Authority Single Equality Scheme 2009/10 to 2011/12 with a view to commending it, subject to any amendments that may be agreed at the meeting, to the Authority for approval.

6. **Absence Management**

Report of the Head Of Human Resources Management And Development (HRMDC/09/6) attached (page 6)

7. **Staff Survey - Update**

Head of Human Resources Management and Development to report.

8. **Reduction In The Number Of Area Manager Positions**

Report of the Assistant Chief Fire Officer (Operations) And Assistant Chief Fire Officer (Community Safety) (HRMDC/09/7) attached (page 11)

9. **The Working Time Directive And Proposed Changes To Legislation**

Report of the Head Of Human Resources Management And Development (HRMDC/09/8) attached (page 14)

10. **European Union Directive 561/2006: Driving Time Regulations And Their Effect On Fire And Rescue Services Personnel**

Report of the Assistant Chief Fire Officer (Community Safety) (HRMDC/09/9) attached (page 25)

11. **Pay Settlement For Non-Uniform Staff - Update**

Head of Human Resources Management and Development to report.

PART 2 – ITEMS WHICH MAY BE TAKEN IN THE ABSENCE OF THE PRESS AND PUBLIC

Nil

MEMBERS ARE REQUESTED TO SIGN THE ATTENDANCE REGISTER

Membership:-

Councillors Cann (Chair), Mrs. Parsons (Vice Chair), Ford, Manning, Parker, Shadrick, Viney

Substitute Members

Members are reminded that, in accordance with Standing Order 30, the Clerk (or his representative) MUST be advised of any substitution prior to the start of the meeting.

NOTES

1. ACCESS TO INFORMATION

Any person wishing to inspect any minutes, reports or lists of background papers relating to any item on this agenda should contact Sam Sharman on the telephone number shown at the top of this agenda.

2. DECLARATIONS OF INTERESTS BY MEMBERS

What Interests do I need to declare in a meeting?

As a first step you need to declare any personal interests you have in a matter. You will then need to decide if you have a prejudicial interest in a matter.

What is a personal interest?

You have a personal interest in a matter if it relates to any interests which you must register, as defined in Paragraph 8(1) of the Code.

You also have a personal interest in any matter likely to affect the well-being or financial position of:-

- (a) you, members of your family, or people with whom you have a close association;
- (b) any person/body who employs/has employed the persons referred to in (a) above, or any firm in which they are a partner or company of which they are a director;
- (c) any person/body in whom the persons referred to in (a) above have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of which you are a Member or in a position of general control or management and which:-
 - you have been appointed or nominated to by the Authority; or
 - exercises functions of a public nature (e.g. a constituent authority; a Police Authority); or
 - is directed to charitable purposes; or
 - one of the principal purposes includes the influence of public opinion or policy (including any political party or trade union)

more than it would affect **the majority** of other people in the Authority's area.

Anything that could affect the quality of your life (or that of those persons/bodies listed in (b) to (d) above) either positively or negatively, is likely to affect your/their "well being". If you (or any of those persons/bodies listed in (b) to (d) above) have the potential to gain or lose from a matter under consideration – to a **greater extent** than **the majority** of other people in the Authority's area - you should declare a personal interest.

What do I need to do if I have a personal interest in a matter?

Where you are aware of, **or ought reasonably to be aware of**, a personal interest in a matter you must declare it when you get to the item headed "Declarations of Interest" on the agenda, or otherwise as soon as the personal interest becomes apparent to you, **UNLESS** the matter relates to or is likely to affect:-

- (a) any other body to which you were appointed or nominated by the Authority; or
- (b) any other body exercising functions of a public nature (e.g. membership of a constituent authority; other Authority such as a Police Authority);

of which you are a Member or in a position of general control or management. In such cases, provided you do not have a prejudicial interest, you need only declare your personal interest if and when you speak on the matter.

Can I stay in a meeting if I have a personal interest?

You can still take part in the meeting and vote on the matter unless your personal interest is also a prejudicial interest.

What is a prejudicial interest?

Your personal interest will also be a **prejudicial** interest if **all** of the following conditions are met:-

- (a) the matter is not covered by one of the following exemptions to prejudicial interests in relation to the following functions of the Authority:-
 - statutory sick pay (if you are receiving or entitled to this);
 - an allowance, payment or indemnity for members;
 - any ceremonial honour given to members;

- setting council tax or a precept; **AND**
- (b) the matter affects your financial position (or that of any of the persons/bodies as described in Paragraph 8 of the Code) or concerns a regulatory/licensing matter relating to you or any of the persons/bodies as described in Paragraph 8 of the Code); **AND**
- (c) a member of the public who knows the relevant facts would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest.

What do I need to do if I have a prejudicial interest?

If you have a prejudicial interest in a matter being discussed at a meeting, you must declare that you have a prejudicial interest (and the nature of that interest) as soon as it becomes apparent to you. You should then leave the room unless members of the public are allowed to make representations, give evidence or answer questions about the matter by statutory right or otherwise. If that is the case, you can also attend the meeting for that purpose.

You must, however, leave the room **immediately after you have finished speaking (or sooner if the meeting so decides)** and you cannot remain in the public gallery to observe the vote on the matter. Additionally, you must not seek to **improperly influence** a decision in which you have a prejudicial interest.

What do I do if I require further guidance or clarification on declarations of interest?

If you feel you may have an interest in a matter that will need to be declared but require further guidance on this, please contact the Clerk to the Authority – preferably before the date of the meeting at which you may need to declare the interest. Similarly, please contact the Clerk if you require guidance/advice on any other aspect of the Code of Conduct.

HUMAN RESOURCES MANAGEMENT AND DEVELOPMENT COMMITTEE
(Devon and Somerset Fire and Rescue Authority)

22 January 2009

Present:-

Councillors Cann (Chair), Ford, Manning, Parker, Mrs. Parsons and Viney

Apologies:-

Councillor Shadrick

Prior to the commencement of the formal business of the meeting, Councillor Cann advised the Committee that Councillor Des Shadrick was seriously ill in hospital. He extended the best wishes of Members and requested that a letter be sent on behalf of the Committee to this effect.

***HRMDC/26. Minutes**

RESOLVED that the Minutes of the meeting held on 14 November 2008 be signed as a correct record.

***HRMDC/27. Declarations of Interest**

Members were asked to consider whether they had any personal/personal and prejudicial interests in items as set out on the agenda for this meeting and to declare any such interests at this time.

No interests were declared.

***HRMDC/28. Absence Management**

The Committee received for information a report of the Head of Human Resources Management and Development (HRMDC/09/1) that set out the position in respect of performance on sickness absence (to the end of November 2008). The report also updated the Committee on progress that had been made on the Absence Management Policy.

It was noted that there had been a 12.9% decrease in absence for all staff compared with the same period last year (Q1 to Q3 in 2008), although there were variations in performance across staff categories. The breakdown for control room staff continued to be over the target as compared with the same period last year with a 69% variance. Reference was made to the Absence Management Policy and it was requested that this be submitted to the Committee for information in due course.

***HRMDC/29. Staff Survey**

The Committee received for information an update given by the Head of Human Resources Management and Development on the action being taken to address the issues raised in the recent Staff Survey.

The Committee noted that there had been a 30% response rate to the survey which was very good for an exercise of this type. The results of the ORS survey were to be published on the intranet with a commentary to explain the action taken where points had been drawn to the attention of the service. The Head of Human resources Management and Development added that a Steering Group had been established to manage the way forward.

***HRMDC/30. Corporate Manslaughter Bill - Update**

The Committee received for information a presentation given by the Head of Human Resources Management and Development.

The presentation covered the action that needed to be taken to ensure that the Authority's policies, procedures and processes were consistent with best practice. It was noted that there had not been any changes made to the Corporate Manslaughter Bill itself, but the new Guide to Health and Safety Offences Act 2008 contained updated penalties that could be imposed for health and safety contraventions and these were outlined at the meeting.

***HRMDC/31. Community Safety Proactive Measures**

The Committee received for information a report of the Assistant Chief Fire Officer (Community Safety) (HRMDC/09/2) that, following the introduction of enhanced response times for dwellings, proposed improvements to service delivery in respect of its prevention activities and specifically, to be able to identify groups in the community that were more at risk and to target resources accordingly. The proposal would:

- improve the ability of the service to access and analyse risk information in order to prioritise those wards with the greatest predominance of high risk groups and;
- develop a delivery strategy, building on the excellent work undertaken by Community Safety Action Teams (CSATs), expanding this work with the utilisation of community fire safety advocates.

This work required the implementation of different forms of employment contract and the Committee was asked to endorse this approach.

Councillor Cann drew attention to a project that had been undertaken in North Devon in respect of Houses in Multiple Occupation (HIMOs) and he suggested that this work should be promoted widely by the Authority. He proposed (seconded by Councillor Parker) that a second resolution be added to the advice in the report

“that the Authority takes steps to promote widely the excellent work being undertaken in North Devon in respect of Houses in Multiple Occupation (HIMOs)”.

Upon a vote, the motion was carried.

RESOLVED

- (a) that the Committee supports the proposal set out within paragraphs 4 and 5 of this report for different employment contracts and conditions;
- (b) that the Authority takes steps to promote the excellent work being undertaken in North Devon in respect of Houses in Multiple Occupation (HIMOs).

***HRMDC/32. Target Setting for Goal 2 of the Devon and Somerset Fire and Rescue Authority Corporate Plan 2009/10 to 2011/12**

The Committee considered a joint report of the Head of Human Resources Management and Development and the Head of Service Planning and Review (HRMDC/09/3) that set out options in respect of targets under Goal 2 “to be an employer of choice” for inclusion within the Corporate Plan for 2009/10 to 2011/12.

RESOLVED

- (a) That the following targets be included within Goal 2 of the Corporate Plan for 2009/10 to 2011/12:
 - (i) By 2013, the percentage of recruits from minority ethnic groups across the whole organisation to be 7.29%;
 - (ii) by 2013, 18% of firefighters recruited into the service to be women;
 - (iii) to reduce the proportion of working days/shifts lost per person due to sickness absence to 9.0 days by 2010/11;
 - (iv) to ensure that 90% of retained posts are filled;
- (b) That, with the inclusion of the targets set out above, the Corporate Plan for 2009/10 to 2011/12 be submitted to the Devon and Somerset Fire and Rescue Authority on 16 February 2009 for final approval.

***HRMDC/33. Update of Projects Relating to Retained Duty Systems**

The Committee received for information a report of the Assistant Chief Fire Officer (Community Safety) (HRMDC/09/4) that updated the Committee in respect of the progress made with the review of the Retained Duty System (RDS), setting out important areas for potential improvement that have been identified. The report also set out details of existing projects that had been instigated to address issues raised during the review and projects in development including:

- The introduction of a retained forum to improve communication and consultation with RDS employees;
- To review the provision of the existing recruitment process in order to improve access and availability of recruitment information;

- To develop a strategy to raise awareness of the role of retained firefighters within the community;
- To develop a strategy to improve liaison with the primary employers of RDS staff.

***HRMDC/34. Work Programme**

The Head of Human Resources Management and Development provided an update on the current position in terms of a Work Programme for the Committee. The areas in which further work was to be undertaken for consideration by the Committee included:

- Staff Survey;
- Retained Review;
- Health of the Organisation;
- Training and Development;
- Health and Safety.

It was suggested that the next meeting on 15 April 2009 could be themed around Training and development, with the meeting to be held at Service Training Centre at Plympton. This would also give the Committee the opportunity to have a tour of the facilities and to view at first hand the work being undertaken there.

***HRMDC/35. Exclusion of the Press and Public**

RESOLVED that, in accordance with Section 100A(4) of the Local Government Act 1972 the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 4 of Part 1 of Schedule 12A (as amended) to the Act, namely information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.

***HRMDC/36. Job Evaluation For Non-Uniformed Staff**

(An item taken in accordance with Section 100A(4) of the Local Government Act 1972 during which the press and public were excluded).

The Committee considered a report of the Head of Human Resources Management and Development (HRMDC/09/5) that set out the progress made with the job evaluation scheme for non-uniformed staff.

RESOLVED

- (a) that the Devon and Somerset Fire and Rescue Authority be recommended to adopt the proposed pay and grading structure as set out in paragraph 4 of report HRMDC/09/5;

- (b) that, in relation to pay protection (and given that incremental increases and cost of living increases have been made in the two previous financial years):
 - (i) an incremental increase and cost of living rise be applied for 2009/10 to match the commitment made to staff at the point of combination; and;
 - (ii) a further year of continued protection be made for 2010/11 by way of a cost of living rise only (i.e. without any further incremental increases);

- (c) that, to facilitate (a) and (b) above, additional budget provision as identified in paragraph 5.2 of the report HRMDC/09/5 be made.

*** DENOTES DELEGATED MATTER WITH POWER TO ACT**

The meeting started at 14.00hours and concluded at 16.12 hours.

DEVON & SOMERSET FIRE & RESCUE AUTHORITY



REPORT REFERENCE NO.	HRMDC/09/6
MEETING	HUMAN RESOURCES MANAGEMENT AND DEVELOPMENT COMMITTEE
DATE OF MEETING	15 APRIL 2009
SUBJECT OF REPORT	ABSENCE MANAGEMENT
LEAD OFFICER	Head of Human Resources Management and Development
RECOMMENDATIONS	<i>That the report be noted.</i>
EXECUTIVE SUMMARY	The progress with Absence Management has been included as a standing item within the HRMD agenda. This report includes an update of the Service performance for absence levels and also the long term absence levels.
RESOURCE IMPLICATIONS	As identified within the paper.
EQUALITY IMPACT ASSESSMENT	
APPENDICES	A. Sickness Absence Management Policy
LIST OF BACKGROUND PAPERS	

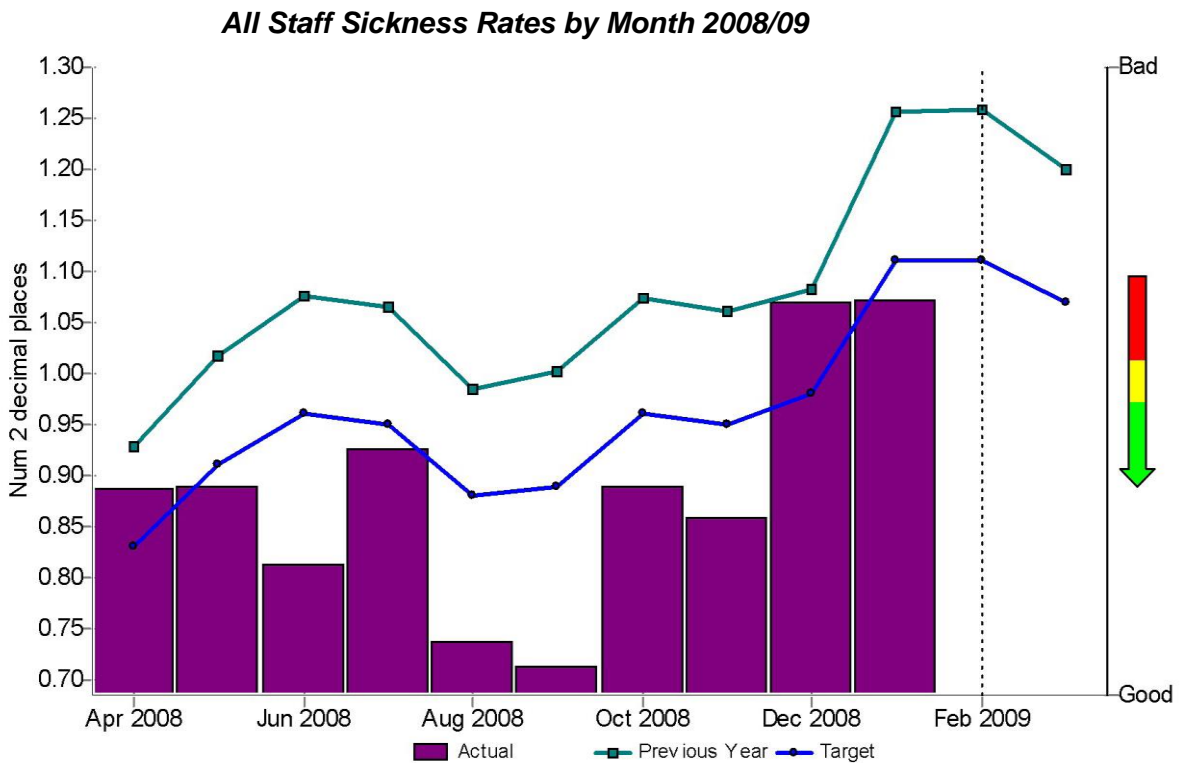
1. **INTRODUCTION**

1.1 Throughout the financial the HRMD Committee have received a regular update on progress with absence management. This item remains within the Service target level as part of the Service Performance Reporting. Sickness Absence had previously been identified as part of the Service exception reporting of our performance and therefore this has continued to be an area of particular Service focus. The Service has also developed a new harmonised policy on Absence Management which will support the continued improvement in reducing sickness absence levels.

2. **CURRENT PERFORMANCE**

2.1 The Service has a corporate target to reduce the levels of sickness absence to the regional average rate of 9.0 days/shifts lost per person by 2010/11. The target for 2008/9 is 11.6 days per person.

2.2 The target absence level was not achieved in 2007/8 but the overall improvement through to January 2008/9 has been maintained in which we have seen a 16% decrease in absence when compared with the same period last year. At this point in time, the previous year was an average of 10.55 days absence per person compared with our actual level for 2008/9 of 8.86 days. This is 6% better than our target of level 9.42 days. During September, October and November the Service performed better than our target levels but this was pulled back in December to 9.1% above target before dropping to 9.6% below target in January.



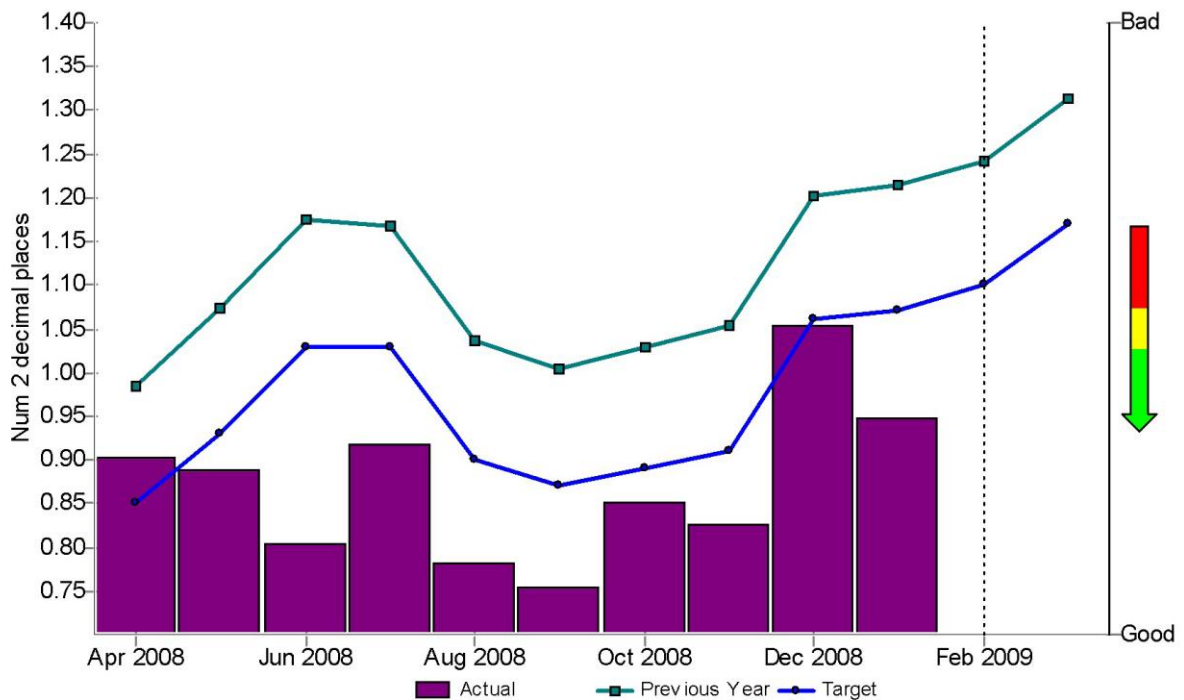
All Staff – Sickness Rates per Person – by Month

	Actual 08/09	Previous Year 07/08	% variance on previous year
Apr 2008	0.89	0.93	-4.4%
May 2008	0.89	1.02	-12.5%
Jun 2008	0.81	1.08	-24.3%
Jul 2008	0.93	1.07	-13.1%
Aug 2008	0.74	0.98	-25.0%
Sept 2008	0.71	1.00	-28.9%
Oct 2008	0.89	1.07	-17.3%
Nov 2008	0.86	1.06	-19.0%
Dec 2008	1.07	1.08	-1.3%
Jan 2009	1.07	1.26	-14.6%
YTD	8.86	10.55	-16.0%

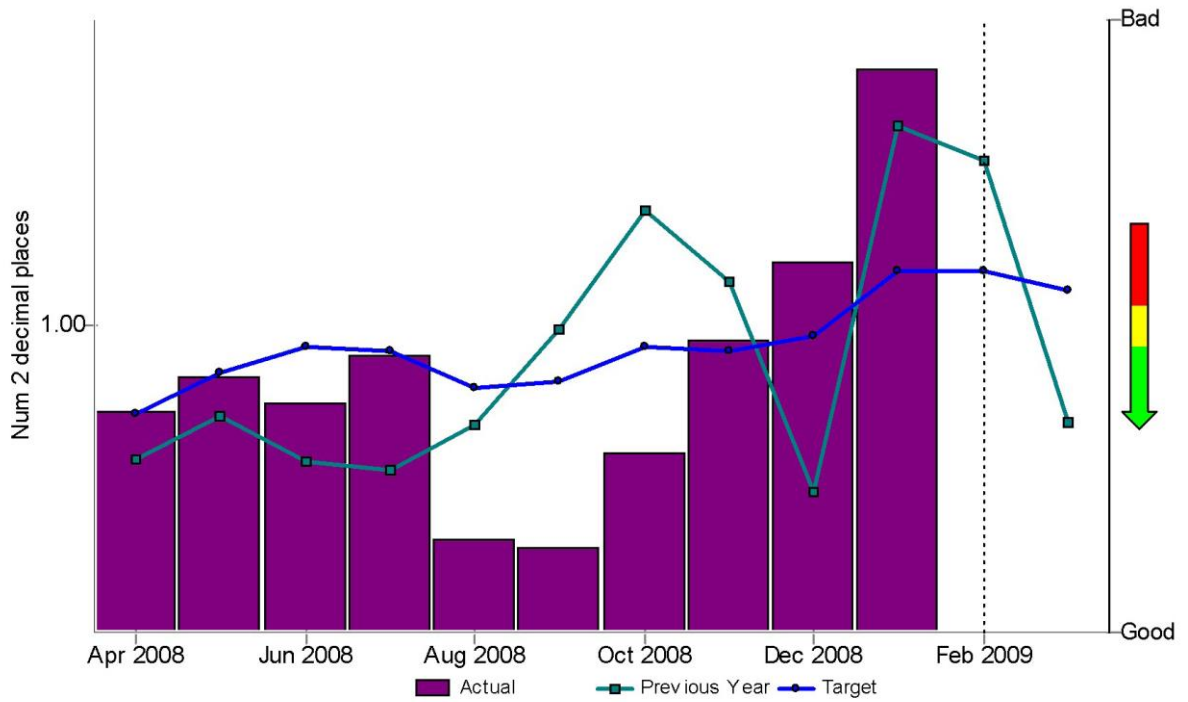
2.3

As usual, we can then break down the figures by staff category and the rates for uniformed, control and non-uniformed are shown below. The uniformed levels saw an increase in December before dropping back in January to 22% below the previous year and 11% below target. For non-uniformed staff Members had requested that the all-staff target level was included as well as the previous year. The results are mixed with a good middle year but falling below target in December and January. The Control Rooms have conversely been below target all year but have seen a remarkable improvement reflecting a reduction in long-term sickness and management intervention on short-term sickness.

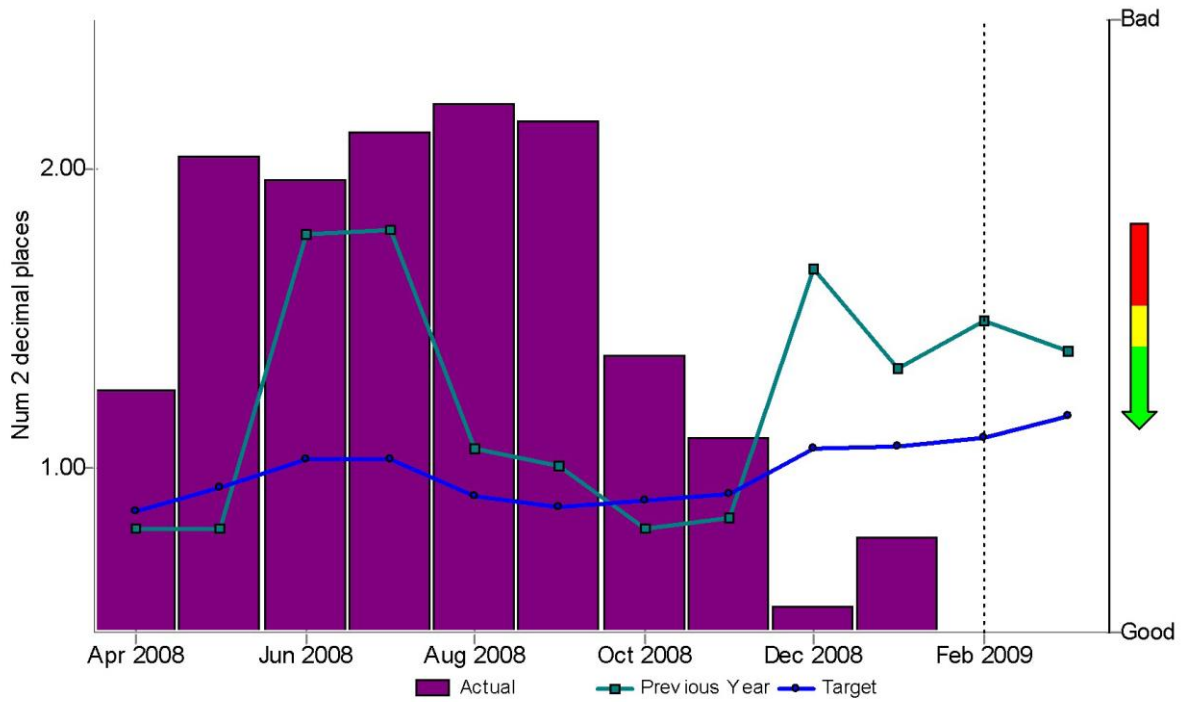
Uniformed Staff Sickness Rates by Month 2008/09



Non-uniformed Staff Sickness Rates by Month 2008/09



Control Staff Sickness Rates by Month 2008/09



3. **COST OF ABSENCE**

3.1 The cost of absence is part of the provided data although it is recognised that the Service has a ridership factor applied at station level to account for absences including annual leave, training and sickness. So, when a member of station based staff is absent, it does not necessarily mean that a further cost have been incurred.

3.2 The costs that have been calculated relate to direct salary costs only and do not take into account any indirect costs or allowances such as flexi duty.

Period	Salary Cost
Q1	£351,894
Q2	£329,383
Q3	£397,000

Of the total:

- 66% of this cost is due to long-term sickness
- 11.5% of this cost is due to certified sickness
- 22.5% of this cost is due to uncertified sickness

4. **DETAILED BREAKDOWN OF LONG TERM SICKNESS**

4.1 The monitoring of long term sickness ie those over 28 days is reported on a monthly basis and includes those who are long term sick and those on restricted duties. The number of long term sick over the last 13 months has been as follows:

No. of staff	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb
Uniformed	27	28	23	23	19	19	20	23	17	20	18	16	18
Retained	14	17	10	10	8	10	8	9	12	14	20	20	20
Non-uniformed	3	6	6	7	6	2	4	2	3	6	5	3	5
Total	44	51	39	40	33	31	32	34	32	40	43	39	43

5. **PROGRESS WITH ABSENCE MANAGEMENT POLICY**

5.1 The Absence Management Policy has been completed and is attached with this report as Appendix A for information (as requested at the previous meeting of the Committee). The policy is also available on the intranet. The original consultation exercise on this policy was extended from 7 November 2008 to enable additional time for the trade unions to respond. There were also meetings with the trade unions and the FBU and FOA have taken part in working party meetings. The policy is now being publicised within the Service and managers are receiving briefings in its implementation and use.

6. **CONCLUSION**

6.1 The Service continues to see a significant improvement over the previous year at a level better than targeted for 2008/9. The work on the Absence Management Policy is at the final consultation stage before being implemented.

JANE SHERLOCK

Head of Human Resources Management and Development



DEVON & SOMERSET FIRE & RESCUE AUTHORITY

REPORT REFERENCE NO.	HRMDC/09/7
MEETING	HUMAN RESOURCES MANAGEMENT AND DEVELOPMENT COMMITTEE
DATE OF MEETING	15 APRIL 2009
SUBJECT OF REPORT	REDUCTION IN THE NUMBER OF AREA MANAGER POSITIONS
LEAD OFFICER	Assistant Chief Fire Officer (Operations) and Assistant Chief Fire Officer (Community Safety)
RECOMMENDATIONS	<p><i>That the Committee notes:</i></p> <p>(a) <i>The reduction of Area Manager positions to six;</i></p> <p>(b) <i>That the staffing improvements in service delivery created by this proposal have been made within the departments undertaking the reduction in posts.</i></p>
EXECUTIVE SUMMARY	Following the Authority decision to reduce the number of Area Manager (AM) posts from twelve to nine there is a need to develop a new duty system for the AM group. Coupled with this is the opportunity to reduce the number of AM posts by a further three posts to six.
RESOURCE IMPLICATIONS	Costs will be contained within existing budget allocations.
EQUALITY IMPACT ASSESSMENT	
APPENDICES	None
LIST OF BACKGROUND PAPERS	None

1. **BACKGROUND**

- 1.1 Following the Authority decision to reduce the number of Area Manager (AM) positions from twelve to nine, it has been identified that there is an opportunity through staff turnover to reduce this further to six. This enables an evolution to a more strategic role which will enhance the support for the Strategic Management Board, whilst improving the continuity for partnership working with our County and Unitary Authorities, Constabularies and other partners.

2. **ROLES**

- 2.1 Following a review of organisational need, it has been determined that there is a need for Area Managers level posts to head up the following areas of work:

- Operations and Resilience
- Community Safety
- Training and Workforce Development
- Area Commands (3) (Eastern, Central and Western)

- 2.2 The posts holders will continue to provide the link between the Strategic Management Board and service delivery groups whilst enhancing the maintenance of strategic partnerships locally.

3. **DUTY SYSTEM**

- 3.1 At the strategic level of the organisation there is a requirement to ensure that managers availability is maximised, therefore any on call rota system must minimise the potential for disruption which is why the AM roles have a separate rota to the Group Manager/Station Manager Flexible Duty System. Because of the lower levels of operational disturbance and reduced need to work positive hours in the evening or weekend, Area managers will be expected to maximise their time at their desks during the normal working week.

4. **IMPROVEMENTS TO DEPARTMENTAL STAFFING**

- 4.1 Each affected department is proposing to develop a flatter structure which will improve communication across the organisation and remove duplication. New posts that will be established as a result of this initiative involve the following strategic areas of work:

Community Safety

Children and Young People
Road Safety Partnerships
Targeting and Evaluation

Operations and Resilience

Service Development
Resilience Planning

Service Planning and Review

Increased capacity in analysis and review.

4.2 All costs will be contained within existing budget allocation.

PETE SMITH
ACFO (COMMUNITY SAFETY)

TREVOR STRATFORD
(OPERATIONS)

DEVON & SOMERSET FIRE & RESCUE AUTHORITY



REPORT REFERENCE NO.	HRMDC/09/8
MEETING	HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT COMMITTEE
DATE OF MEETING	15 APRIL 2009
SUBJECT OF REPORT	THE WORKING TIME DIRECTIVE AND PROPOSED CHANGES TO LEGISLATION
LEAD OFFICER	Head of Human Resources Management and Development
RECOMMENDATIONS	<p>(a) <i>That the Committee supports the stance taken by the LGA and that the County Councils, MPs, MEPs etc are lobbied accordingly;</i></p> <p>(b) <i>That the potential impact on DSFRS of changes in the opt out clause be noted;</i></p> <p>(c) <i>That the areas of forthcoming legislation as set out within Appendix A be noted.</i></p>
EXECUTIVE SUMMARY	<p>The Working Time Directive and proposed changes to legislation will potentially impact on the flexibility of Devon and Somerset Fire and Rescue Service in terms of the availability of employees on the Retained Duty System, and Wholetime employees who have secondary RDS contracts, and other employees who have secondary employment to support service delivery e.g. the Community Safety Action Team. This is largely due to the suggestion to remove the opt out clause relating to a maximum 48 hour working week, the definition of working time and compensatory rest.</p> <p>The report also highlights other changes in employment law which are forthcoming, noting opportunities and issues for the Service and its people.</p>
RESOURCE IMPLICATIONS	Resource issues are not identifiable at the moment. An electronic availability system will help provide this management information required to assist this.
EQUALITY IMPACT ASSESSMENT	None
APPENDICES	A – Areas of forthcoming legislation
LIST OF BACKGROUND PAPERS	None

1. **BACKGROUND**

- 1.1 Currently, the UK has reached a political agreement with the European Union (EU) to retain its opt-out under the Working Time Directive 1993 (WTD), which means that employees can opt-out of the average maximum working hours limit of 48 hours. The deal is subject to approval by the European Parliament and implementation into UK law, and if adopted it will benefit both employers and employees who value flexibility in working hours. There is some debate, however, as to whether or not the opt-out provision will continue to apply to organisations such as the Fire and Rescue Service, Doctors etc.
- 1.2 The most significant proposals to amend the Directive were proposed by the European Commission in 2004. Discussions are taking place now, and if there is agreement, it may or may not lead to significant amendments to the Directive. The revision is contentious and the outcome has implications for UK local government (both for Fire and Rescue Service and for staff in residential care homes). If agreed it will have to be translated into our own domestic working time legislation (The Working Time Regulations 1998). The Local Government Association (LGA) is working on behalf of local authorities and fire and rescue authorities to ensure that the implications of the Directive's revisions are understood.
- 1.3 The key impact of the proposals in relation to the WTD is as follows:
- The opt out
 - On call time
 - Compensatory rest.
- 1.4 Each of these areas is explored in more depth in this report, together with details in respect of action being taken by both EU, national and local government.

2. **THE OPT-OUT**

- 2.1 The Working Time Regulations 1998 allows the UK to retain its opt-out from the maximum 48-hour working week. Individual workers could decide to work beyond the 48 hour working week subject to other safeguards in the Directive (rest breaks, rest days, holidays etc). The maximum reference period for calculating an average weekly working hours is six months. But, where an individual has opted- out, an upper limit of a 60-hour maximum week will apply, calculated as an average over three months. This means employers must keep working time records, even for opted-out workers.
- 2.2 The Directive also encourages employers to examine requests for changes to working hours and patterns in light of business needs and the need for flexibility on the part of both the employer and the worker. But what might this mean in practice?
- 2.3 It would appear to mean that the UK should implement a legal right on the part of all workers to request flexible working. As such, that would go beyond the extension to all staff with children under the age of 16 that was recently proposed and endorsed by the UK government and due to come into effect in April 2009. Whether this right would mirror existing flexible working rights in terms of process and grounds for refusal, or whether it would be introduced as a more diluted "duty to consider" obligation, similar to requests to work beyond the normal retirement age, remains to be seen.

- 2.4 Staff will not be permitted to opt-out on commencement of employment unless they are to work less than 10 weeks per year. Those on probationary periods who opt-out may withdraw their consent at any time up to six months into employment.
- 2.5 There is currently some debate that the opt-out clause might be removed. The Commission and other Member States want it removed, believing it gives the UK a more competitive advantage over those EU member states that have not made use of the opt-out and because it believes there is evidence of abuse of the opt-out clause. If this were to be the case this would have significant impact on Devon and Somerset Fire and Rescue Service (DSFRS) which has the majority of its employees operating as part time firefighters on the Retained Duty System; having primary employment outside the Fire and Rescue Service.
- 2.6 The opt -out clause currently allows individuals to work over and above an average 48 hours week, if they choose to do so thereby offering availability in terms of a secondary employment contract to DSFRS.
- 2.8 **The LGA supports the UK government view of retaining the opt-out.**

3. ON-CALL TIME

- 3.1 Definition of working time is already a complex area of law. Currently, time spent on call at a workplace should be counted as working time, irrespective of whether the worker is called upon to actually perform any duties.
- 3.2 The EU deal proposes a new distinction between 'active' and 'inactive' on-call time. 'Active' on-call time would be time during which the worker is required to be at work, but is not required to perform any duties. This would count as working time for the purpose of calculating compliance with Working Time Directive limits.
- 3.3 'Inactive' on-call time would be, for example, time spent at home during which a worker is on-call, but not performing duties. This would only count as working time if national law or a collective agreement so provided, in which case the maximum average working week for opted-out staff would rise to 65 hours over a three-month period. In the absence of such a law, inactive on-call time would be neither working time nor rest time.
- 3.4 The proposed changes imposes further administrative burdens on employers such as Fire and Rescue Services that will need to separately record active and inactive on-call time. The European Court of Justice has interpreted the definition of working time to include all on-call time spent at the workplace, even when employees are actually resting. This has potential impact on a number of local government activities e.g. fire fighting and social care.
- 3.6 **The LGA believes 'inactive' time should not be classed as working time.**

4. COMPENSATORY REST

- 4.1 Under the Directive, an individual's rights to a rest period (e.g. the right to 11 hours daily rest between periods of work) can be amended, subject to the individual being granted a period of compensatory rest. The European Court of Justice has held that this rest must be granted immediately.
- 4.2 **The LGA believes this provision must be more flexible to allow rest in a reasonable period, taking into account operational factors and staffing levels.**

5. **DRIVING HOURS**

5.1 The changes proposed to the Working Time Directive regarding driving hours is subject to a separate report on the agenda for this meeting.

6. **EU AGREEMENT**

6.1 For amendments to be made to the Directive there has to be agreement between the Council of Ministers (EU member state governments) and the European Parliament (EP).

6.2 Over five years, there have been numerous proposals and counter proposals on each of these issues. It has been highly contentious between employers and trade unions and between political parties and member state governments. The main views are:

6.3 The **Council of Ministers** (national governments) agreed in June 2008 to:

- Retain the opt-out (subject to tighter conditions for the protection of workers);
- Class inactive on-call time as neither working time or rest; and
- Compensatory rest should be granted within a reasonable time.

6.4 **The LGA supports the Council's position.**

The **European Parliament** proposed the following amendments in December 08:

- The 48 hour opt-out should be phased out within three years;
- On-call time in the workplace, even when inactive to be counted as working time;
- Working hours in more than one job should be considered together; and
- Compensatory rest should be taken immediately.

6.5 The Council and Parliament now enter into a formal conciliation process to reach agreement on the final text. This process lasts 6-8 weeks and may or may not lead to significant amendments to the Directive. The first meeting was on 17 March 2009. UKREP, UK government representation in Brussels, have told the LGA that there may be subsequent meetings. The Council will consider the EP amendments, then accept or reject them. It is thought that they will reject them.

6.6 If conciliation fails, either because agreement cannot be reached between the Council and the EP or because they run out of time (the EP will come to the end of its mandate in June 09 prior to the European elections), the status quo remains. This is not a lasting solution but would mean the 48 hour opt-out remains for the time being, and ECJ case law on the definition of working time and the timing of compensatory rest would also remain.

6.7 The Commission may pursue infraction proceedings against Member States if they did not make the necessary amendments to their legislation and may come forward with another proposal on the 48 hour opt-out.

7. **UK GOVERNMENT**

- 7.1 For the UK, BERR has overall responsibility for dealing with the Directive and Communities for Local Government (CLG) and Department of Health are also involved. The UK Government's absolute priority is to maintain the opt-out, which is what the LGA Group has always supported.
- 7.2 In the past, the UK government has been on its own in supporting the retention of the opt-out as initially it was the only state using it. However, a significant development has been that around 15 other EU countries have now used the opt-out in some form, so the Council's position on retaining the opt-out is likely to look much stronger.
- 7.3 The UK government has also strongly supported the LGA line on the definition of working time and compensatory rest provisions. However, to maintain and build support for the retention of the opt-out, it could be that the UK government concedes on other elements of the Directive such as the definition of on-call time.
- 7.4 If this is the case, the LGA and UK government viewpoints would diverge, as its implications (on-call time and compensatory rest) could be significant for the local government workforce. Also, the UK government has been strongly supported on all of these issues by a number of other member states who may now find it difficult to maintain their agreed positions.

8. **LOCAL GOVERNMENT ACTIVITY**

- 8.1 The LGA has been lobbying on the Directive since 2004. Policy expertise is provided by Local Government Employers (LGE) who represent UK local government at the Employers Platform, a European network of local government employment experts.
- 8.2 This is part of CEMR (pan European LGA) and is the main local government lobbying mechanism on the Directive at EU level. It also works through CEEP, the European public sector employers body. The LGA European team has assisted the LGE with the provision of information and in its lobbying activity in the process.
- 8.3 A significant problem is that there is much misunderstanding of the impact of the Directive and proposals for change because:
- Even within the proposed amendments there is still scope for different interpretations of the impact;
 - All of the issues are interrelated which means that a change in one aspect can have a knock-on effect on another; and
 - The actual impact will depend on the working arrangements of different employers.
- 8.4 This makes it almost impossible to quantify the effects. CLG is in contact with the LGA Group to assess the impact of the EP's amendments on fire authorities (implications in terms of continuing to provide operational cover, including an idea of cost). It will use this in its communications to other national governments /MEPs.

- 8.6 Changes to the opt-out system or the calculation of on-call time could pose severe difficulties for UK fire and rescue services, because the fire service is not only staffed by full-time staff but also by “retained firefighters”. As Members are aware these are people with a fulltime day job who also work part-time as a firefighter. Some fire and rescue authorities have been in contact with the LGA Group and one has reported that it has made permanent some of its retained staff and that it knows of other authorities undertaking cost benefit analyses if the opt-out were deleted.
- 8.7 The LGA issued a briefing for MPs which was cited during the Adjournment Debate on the European Working Time Directive on 11 February. The briefing set out the implications of the loss of the opt-out for fire and rescue authorities and can be accessed at: <http://www.lga.gov.uk/lga/core/page.do?pagelid=1645875>

9. **KEY POINTS**

- 9.1 The UK currently still has the right to opt out of the maximum 48-hour working week, but this is subject to change and could impact on availability of staff who have secondary employment contracts with DSFRS.
- 9.2 Flexible working is encouraged, but isn't a legal right for all.
- 9.3 Correctly classifying 'on-call' time will be important as the law in this area is complicated.
- 9.4 The proposal is subject to scrutiny by the European Parliament and is unlikely to come into force until 2010.

10. **CONCLUSIONS AND NEXT STEPS**

- 10.1 The recent change in the EU presidency (from Slovenia to France) on 1 July 2008, and the fact that these proposals remain subject to the approval of the European Parliament, mean that their adoption is by no means a foregone conclusion. The UK has some flexibility in terms of how the changes are implemented, and will have a two-year window to do so. Therefore, any changes are unlikely to take effect before 2010.
- 10.2 DSFRS is currently assessing the impact of the changes in the legislation to the service, so that it can anticipate the likely effect in terms of cost and resourcing and identify solutions.
- 10.3 DSFRS is currently involved in a procurement process for a Retained Duty availability system, which will provide improved management information about availability of individuals, stations and areas and impact on resourcing and crewing levels. The intention is that this system will interface with the new Regional Control Centre. An update on the Retained Duty System project was given at the previous meeting of the HRMD Committee on the 22 January 2009
- 10.5 The LGA will continue to work on behalf of UK local authorities to support the retention of the UK opt-out by contributing to decision making processes both in Whitehall and Brussels. Specifically they will:
- Lobby UK Government departments on local government views to inform their EU level negotiations;
 - Lobby MEP's on the conciliation committee (list of MEPs on the committee is available) and encourage the pan European network to do the same;

- Carry out some cost benefit analyses On Fire and Rescue Services (and care homes);
- Continue to keep local authorities informed about what the LGA Group is doing on our behalf; and;
- Develop media awareness

10.6 The Chief Fire Officers' Association will be supporting the stance of the LGA as indicated above. The Committee will be updated at future meetings as more information becomes available.

10.7 Key contacts are as follows:

Kelvin Scorer Local Government Employers kelvin.scorer@lg-employers.gov.uk
Jasbir Jhas, LGA European and International unit jasbir.jhas@lga.gov.uk
Jennifer Crisp, LGA Brussels office Jennife.crisp@lga.gov.uk

11. **OTHER FORTHCOMING LEGISLATION**

11.1 Appendix A sets out areas of forthcoming legislation, together with indicative timescales, for information.

JANE SHERLOCK
Head of Human Resource and Management Development

NEW EMPLOYMENT LAW AND LEGAL TIMETABLE

For interest what follows is a brief spotlight on recent and future changes to employment legislation and opportunities and issues for Devon and Somerset Fire and Rescue Service.

Minimum statutory holiday entitlement increases to 28 days

1 April 2009

The statutory entitlement to paid holiday increases from 24 days to 28 days. This includes public holidays. This does not have an impact on holiday entitlement for Devon and Somerset Fire and Rescue Staff in terms of any uplift, as our contractual holiday entitlement is above this minimum and has been for some time, but does give freedoms around directing when some holiday should be taken.

A recent NJC ruling in March 2009, has stipulated that in line with the Working Time Directive, employees on long term sick are entitled to carry over any leave untaken into the next financial year. Our Attendance and Sickness Absence Management policy will be updated to reflect this, but also give guidance on how the organisation will expect accrual of annual leave to be managed without minimum disruption to business continuity.

Trade union membership rules are amended

6 April 2009

Section 19 of the Employment Act 2008 allows a trade union to expel or exclude an individual on the basis of his or her membership or former membership of a political party. The changes to the rules on trade union membership arise from a ruling of the European Court of Human Rights that a trade union could expel a member of the British National Party. This is entirely consistent with DSFRS's Core Values and echoes the Chief Fire Officers Association stance on this particular issue.

Repeal of the dispute resolution procedures

6 April 2009

The Employment Act 2008 brings into force sections 1 to 7 and schedule 1, part 1 of the Employment Act 2008. These parts of the Act repeal the statutory dispute resolution procedures, returning the law on unfair dismissal to the position prior to the dispute resolution procedures coming into force in October 2004. This should simplify the Grievance and Disciplinary process. These policies were already under review in terms of harmonising due to combination but they will be amended to reflect the changes of the legislation also.

Revised ACAS Discipline and Grievance Code of Practice comes into force

6 April 2009

The revised statutory ACAS Code of Practice on disciplinary and grievance procedures is introduced. Where there is a breach of the Code of Practice, a tribunal can increase or decrease any award made by up to 25%. The service continues to train its managers in the investigation of sensitive issues, has regional and local forum that monitors casework and shares best practice and is currently drafting Investigation Guidelines to improve the quality and consistency of processes and procedures and report writing so that there are improved outcomes for the service and the employee. This was an issue raised in the recent staff survey

Right to request flexible working is extended

April 2009

The right to request flexible working is extended to parents of children up to the age of 16. Our suite of family friendly policies, include the right to request flexible working, Flexi-time, Carers and Dependants leave, Maternity, Paternity and Adoption Leave. We also have a policy which supports staff in undertaking Public Appointments. They are currently being reviewed, and will be publicised to all staff on a more frequent basis, using staff forums, notice boards, the intranet site and "Your Shout" magazine. They all result in improving work-life balance and can be seen as a benefit to staff, contributing to Goal 2 in our Corporate Plan, being "An employer of choice".

Extension of right to time off for public duties

April 2009

The right to time off for employees serving in a wider range of civic roles is extended. It is proposed that the right to time off for public duties under s.50 of the Employment Rights Act 1996 should be extended to cover roles such as members of probation boards; members of court boards; and youth offender panel members. It is also proposed that roles in the housing sector, such as board members of registered social landlords and tenant management organisations, should be covered by time off entitlements. DSFRS already allows time off for public duties such as Governors in an Educational establishment, Justice of the Peace amongst others. We are currently reviewing this policy as it is another benefit to staff in terms of Flexible Working, allowing an individual to pursue an interest outside of the service. The Service benefits from the increased skills that the individual can bring back into their primary employment contract with us, along with increased networking skills and forging partnership working.

Right to request time off for training is introduced

(time to be introduced not available)

A right to request time off to undertake training, modelled on the right to request flexible working, is introduced. Employers will be obliged to consider seriously requests that they receive, but will be able to refuse a request where there is a good business reason for doing so. Employers will not be obliged to meet the salary or training costs to enable a request for time off to train to be met.

Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2008 comes into force

(time to be introduced not available)

The Order amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. It updates definitions related to child care to bring these into line with recent legislation, it extends the definition of conviction to include cautions, reprimands and final warnings, and it expands the list of sensitive positions which qualify for disclosure of spent conviction information.

Centralised vetting system for people working with children and vulnerable adults comes into force

12 October 2009

The Safeguarding Vulnerable Groups Act will introduce a centralised vetting system for people banned from working with children and vulnerable adults. Employers will be able to make checks online, with information updated straight away when any individual is added to the list. DSFRS has a number of roles which require enhanced disclosure.

Employers will be informed where possible if an individual becomes barred. There will be fines of up to £5,000 for employers that knowingly employ individuals on the list or fail to make the relevant checks.

Maternity pay is extended to 12 months

April 2010

The Government intends to extend paid maternity leave to 12 months. This follows an extension to nine months from April 2007. The [Work](#) and Families Act will bring this provision into force. The Head of HRMD will continue to monitor trends and allocate adequate budgetary provision to accommodate this. Maternity and linked welfare policies are currently being reviewed to ensure that we support individuals in their workplace, in terms of risk assessments, appropriate Personal Protective Equipment and offer return to work “keeping in touch days”, to encourage and support parents who wish to return to work after the birth of a child.

Paternity leave and pay is extended

April 2010

The Government intends to allow fathers to benefit from up to 26 weeks' paid additional paternity leave if the mother of the child returns to work before the end of the maternity leave period to which she is entitled. The [Work](#) and Families Act will bring this provision into force. The Head of HRMD will continue to monitor trends and allocate adequate budgetary provision to accommodate this. Paternity and linked welfare policies are currently being reviewed.

Number of years' contribution required to achieve a full basic state pension reduced

6 April 2010

The number of years' contribution required to achieve a full basic state pension reduces to 30 years for both men and women.

Agency workers directive must be implemented

5 December 2011

The Temporary Agency Workers Directive ensures that temporary agency workers receive the same basic employment and working conditions as if they had been employed directly by the end user.

Personal Accounts scheme starts up under Pensions Act 2008

2012

The Pensions Act provides that from 2012 all eligible workers, who are not already in a workplace pension scheme, are to be automatically enrolled into either their employers' pension scheme or a new savings vehicle, known as a personal account scheme. To encourage participation, employees' pension contributions will be supplemented by contributions from employers and tax relief.

Discrimination law review -Single Equality Bill

Autumn 2009

Bringing together equality and human rights into a single Commission marks an important shift in the way we think about equality. The consultation document published in 2007 looking at the proposals surrounding a review of discrimination law is to be enshrined in the Employment Bill. The aim of the bill is to simplify and harmonise forty years of differing pieces of equality legislation. It looks at proposals to promote compliance, and good practice, simplify definitions, tests (of direct and indirect discrimination) and exceptions. It covers, goods, services facilities and public functions, codes of practice, public sector equality duties, and extends good practice to the private sector. It also will assist dispute resolution in both employment and non-employment fields. The aim of the bill is to make more effective law and tools to tackle disadvantage.

DSFRS is about to publish a Single Equality Scheme "Making the Connections", a document which sets out how we will work with the impact of difference in both employment and service delivery. It takes into account changes in the Equality Bill and embraces the change of focus around human rights. Our draft Scheme is outlined to Members as a separate item on the Agenda with the proposal to go to Full Fire Authority on the 6th May for approval

DEVON & SOMERSET FIRE & RESCUE AUTHORITY



REPORT REFERENCE NO.	HRMDC/09/9
MEETING	HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT COMMITTEE
DATE OF MEETING	15 APRIL 2009
SUBJECT OF REPORT	EUROPEAN UNION DIRECTIVE 561/2006: DRIVING TIME REGULATIONS AND THEIR EFFECT ON FIRE AND RESCUE SERVICE PERSONNEL
LEAD OFFICER	Assistant Chief Fire Officer (Community Safety)
RECOMMENDATIONS	<p><i>That the Committee notes:</i></p> <p><i>(a) the impact of these Regulations on Fire and Rescue Service personnel, and;</i></p> <p><i>(b) the measures being put into place to minimise the exposure of the Service to financial and reputational risk</i></p>
EXECUTIVE SUMMARY	<p>The EU Drivers hours and Tachograph Rules for Goods Vehicles came into effect on 11th April 2007. The purpose of the rules is to limit driving time and ensure that proper break and rest periods are taken so that road traffic accidents are prevented. The regulations apply to anyone who drives an in scope vehicle as their primary employment.</p> <p>Analysis of the current position has been made by officers and there are 62 employees on the retained duty system who are directly affected by the change in legislation.</p>
RESOURCE IMPLICATIONS	Until guidance on the full application of the Regulations is given by Department for Communities and Local Government the full financial impact will not be known. However, at this point the impact is expected to be minimal.
EQUALITY IMPACT ASSESSMENT	
APPENDICES	None
LIST OF BACKGROUND PAPERS	None

1. **BACKGROUND**

- 1.1 The EU Drivers' hours and Tachograph Rules for Goods Vehicles came into effect on 11th April 2007. The purpose of the rules is to limit driving time and ensure that proper break and rest periods are taken so that road traffic accidents are prevented.
- 1.2 The rules apply to certain categories of mobile workers the most common being drivers of Heavy Goods Vehicles with an overall weight over 3.5 tonnes and Passenger Service vehicles with more than 9 seats, or travelling more than 50 kilometres.
- 1.3 The rules restrict the amount of time that a "mobile worker" can work by laying down that such workers must have 11 hours rest in every 24 and a clear 48 hours weekly. It therefore follows that such mobile workers will not be able to be employed under the Retained Duty System (RDS)
- 1.4 Vehicle Operator Services Agency (VOSA), the enforcing agency for this legislation have provided details of the relevant measure which passed the EU regulation into United Kingdom law. VOSA are currently not prosecuting breaches of the legislation and are unlikely to do so before guidance has been provided by DCLG etc, however the Statutory Instrument to which we were referred means that, legally, in the event of an in-scope RDS driver, in his primary employment, being stopped by them after he had been on RDS duty when he should have been resting, the service would be liable to prosecution, along with the primary employer and the driver and that we could be fined up to £2,500.
- 1.5 Given our 62 in scope personnel this exposes up to a total theoretical financial risk of £142,000.

Note: this clause is buried in a Statutory Instrument which appears to deal with a separate matter (tachographs)

2. **RESEARCH**

- 2.1 The Chief Fire Officers Association, Retained Firefighters Union and DCLG are determining the size of the issue nationally and what, if any, steps they will take in respect of these Rules.
- 2.2 The Service has 62 individuals in the RDS currently identified as being "in scope" of the Rules.

3. **ACTIONS UNDERTAKEN TO MINIMISE THE IMPACT**

- 3.1 Officers have implemented the following actions to ensure that any impact is minimised whilst awaiting detailed guidance from DCLG:
 - That nobody whose primary employment makes them in scope be recruited to the RDS forthwith
 - That no Wholetime staff be permitted to drive either for the RDS or any external employer other than on days 7 and 8 of each tour of duty
 - That those individuals who are identified as being in scope are not permitted to drive any Service vehicle during their required rest periods, but whilst guidance is awaited from CLG on how Services are to proceed nationally, the Service will permit in scope individuals to continue to ride and carry out other non-driving duties.

- The Service makes this temporary derogation on the understanding that individuals will manage their availability on the RDS with due regard to the individual's responsibility to remain in a fit state to be able to carry out their primary employment.
- That the Service recognises that it may need to negotiate with primary employers with a view to possible redeployment of in scope personnel without those persons losing out financially and that the Service will look to DCLG for financial or other support (as appropriate) in so doing.

3.7 Strictly speaking, the Service will be in breach of the rules even after the implementation of the above actions. However, it is our understanding that most, if not all, Services in the country are in the same situation. Individuals found to be in breach of the Rules are liable to a fine of a maximum of £2,500 under the driving times section of the Transport Act (1968), however VOSA, who is the body charged with enforcement of these rules, is presently taking an educational, as opposed to a punitive, approach and that this will continue to be the case until such time as detailed guidance is issued by DCLG or Department for Transport. Given that we do not yet know what that guidance will be it seems unwise to act precipitately only to have to change our policy later.

PETE SMITH
Assistant Chief Fire Officer (Community Safety)