



DEVON & SOMERSET FIRE & RESCUE AUTHORITY

REPORT REFERENCE NO.	HRMDC/11/5
MEETING	HUMAN RESOURCES MANAGEMENT & DEVELOPMENT COMMITTEE
DATE OF MEETING	11 APRIL 2011
SUBJECT OF REPORT	RETAINED DUTY SYSTEM: OUTCOME FROM PART-TIME WORKERS REGULATIONS EMPLOYMENT TRIBUNAL
LEAD OFFICER	Director of People and Organisational Development
RECOMMENDATIONS	<i>That the report be noted.</i>
EXECUTIVE SUMMARY	<p>There were Employment Tribunal test cases in two authorities (Kent and Royal Berkshire) which had originally been raised under the part-time Workers (Prevention of Less Favourable Treatment) Regulations in 2001. These test cases have been subject to the Employment Tribunal, Employment Appeal Tribunal, Court of Appeal and House of Lord processes returning finally at the request of the House of Lords to the original Employment Tribunal again for re-consideration and determination.</p> <p>The Tribunal found in favour of the retained firefighters (who were supported by the Fire Brigades Union) and since then the parties, at the request of the Tribunal, have sought to negotiate a settlement. This complex work has now been completed and formal agreement has been reached. This will result in a compensation payment for those staff affected and in order to comply with the Regulations from the end of the compensation period there have been amendments to the Grey Book.</p>
RESOURCE IMPLICATIONS	The financial implications are included within the appropriate section within the main body of the report.
EQUALITY IMPACT ASSESSMENT	None
APPENDICES	None
LIST OF BACKGROUND PAPERS	None

1. **INTRODUCTION**

1.1 Following the introduction of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations in 2000 there were multiple claims from Retained Firefighters made throughout the UK Fire & Rescue Services in relation to the regulations. There were approximately 12,000 claimants supported by the Fire Brigades Union (FBU) and 2,500 claimants supported by the Retained Firefighters Union (RFU). It was subsequently agreed that for the claims supported by the FBU, there would be Employment Tribunal test cases in two authorities namely Kent and Royal Berkshire which were identified in 2001. The remaining FBU cases were stayed pending the outcome of the test cases as were those claims separately lodged by members of the RFU. These 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 again for re-consideration and determination in 2008.

1.2 The judgement found that the claimants were engaged in broadly similar work to their named comparators and that they were treated less favourably in respect of access to pension rights and payment for sickness absence. The tribunal also indicated that it believed the parties should endeavour to reach a negotiated settlement. This complex piece of work has now been completed and formal agreement has been reached. This will result in compensation payments for those staff affected and in order to comply with the Regulations from the end of the compensation period there have been amendments to the Grey Book.

2. **NEGOTIATED SETTLEMENT**

2.1 Following a protracted negotiation period, the terms of the settlement were agreed along with how individual employees will be advised of the outcome and how the stayed claims will be withdrawn. The service is required to provide the staff data for those employed within the Retained during the reference period (1 July 2000 to 30 June 2010) to a third party organisation called Popularis who will handle the communications and who will ensure compliance with the Data Protection Regulations.

2.2 The Service is required to provide this information within 35 days of the agreement made on the 8 March 2011. The claimants will then be informed of their settlement calculation and will need to confirm their acceptance of the settlement to the FBU. This is because it was a multiple claimant Employment Tribunal and all individual claimants need to withdraw their claim. Other staff who did not make a claim or are non-union claimants will also need to confirm their acceptance via the Authority. The mechanism includes two reminder opportunities to eligible past and present employees.

2.3 The compensation payment is pro-rata to length of service within the reference period, rank/role and level of cover based on a particular date - which for those holding employment status currently will be the 30 June 2010 or if they have previously left the Service then on the date of leaving. The maximum levels of payment are:

Firefighter	£750
Leading Firefighter/Crew Manager	£778
Sub-officer and Station Officer/Watch Managers	£806

- 2.4 If a Retained employee has left the Service since 30 June 2010 and had not previously presented a claim then they are no longer eligible. The minimum level of compensation will be £150.
- 2.5 Negotiations are continuing with the RFU on the matters of the settlement and mechanism for withdrawal of RFU ET cases. Therefore the agreement does not at present apply to employees who are members of the RFU. They will not therefore yet receive a compensation payment but it is expected that agreement will soon be reached.
- 2.6 The agreement provides a full and final settlement of the Terms and Conditions Claims and in respect of any claims arising out of the Grey Book in respect of the following matters:
- Sick leave
 - Acting-up allowance
 - Pay for public holidays
 - End of course leave
 - Trade union leave
 - Overtime
 - Spoiled meals allowance
 - Removals/lodging allowance
 - Recall to duty
 - Payment during suspension
 - Payment during maternity support leave
 - Special leave
 - All other claims or potential claims under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations arising out of the 6th edition of the Scheme of Conditions of Service of the National Joint Council for Local Authority Fire and Rescue Services (and its predecessors) up to 30 June 2010.
- 2.7 The agreement is not in settlement of the Pensions Claims which will be subject to a separate agreement between the FBU and the Secretary of State for Communities and Local Government.

3. AMENDMENTS TO THE GREY BOOK

- 3.1 The National Joint Council have also issued amendments to the Grey Book in order to ensure compliance with the Regulations from the end of the settlement reference period of the 1 July 2010. These changes have been developed with the assistance of advisers and legal representatives in order to ensure compliance with the Part-time Worker Regulations. This includes changes around the following:
- Attendance on training courses
 - Acting up payments
 - Public holiday leave and payments
 - End of course leave

- Trade union facilities ie payment for attendance at joint consultative or negotiating meetings
- Maternity pay
- Sick leave ie payment
- Payment whilst suspended under the disciplinary procedure
- Reimbursement of Medical charges if employed prior to the 1 November 1994

4. FINANCIAL IMPLICATIONS

4.1 The estimated cost in settlement of the claim is £643,000, including settlement for RFU members, which is expected to be agreed soon.

4.2 Members may recall that that the Authority had previously set aside an amount of £949,000 into a financial Provision to fund the **total** cost of the settlement. At this time, without knowing the impact of the pension settlement we are unable to determine whether we have set aside sufficient reserves. Based on this latest position, indications are that the Provision will need to be increased to provide sufficient funds to cover the pension settlement at a future date. The Treasurer will need to take a view, when finalising the Accounts for 2010-11, as to how much the Provision will need to be increased by, in light of the latest position at that time. An update on the financial implications will be reported to the next meeting of the Resources Committee to be held on the 18 May 2011.

5. CONCLUSION

5.1 This has been a long-standing matter which has now been resolved from a National Joint Council perspective, however, the pension claim remains outstanding.

Jane Sherlock
DIRECTOR OF PEOPLE AND ORGANISATIONAL DEVELOPMENT