

Part-time Workers Case Settlement Agreement

Report of the Chief Fire Officer

For further information about this report please contact Paul Raymond, Chief Fire Officer, on 01743 260205 or Louise McKenzie, Assistant Chief Fire Officer (HR), on 01743 260205.

1 Purpose of Report

This report brings to the attention of the Human Resources (HR) Committee the settlement agreement issued in conclusion of the long-running Part-time Workers (prevention of less favourable treatment) Fire Brigades Union (FBU) employment tribunal cases and the work now being done by the Service.

2 Recommendations

The Committee is asked to note the contents of the report.

3 Background

On 8 March 2011 Circular NJC/3/11 was issued detailing the conclusion of the ongoing (since 2001) test cases in two authorities (Kent and Berkshire) under the above legislation. The circular explained that:

‘.. 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 again for re-consideration and determination. The Tribunal found in favour of the retained Firefighters (who were supported by the FBU) and since then the parties have at the request of Tribunal sought to negotiate a settlement.

Circulars NJC/2/10 and NJC/5/10 advised that a settlement in respect of the terms and conditions aspect of the case had been agreed in principle with the Fire Brigades Union. Since then further work with respective legal representative has been undertaken in order to identify how individual employees will be advised of the outcome as well as an appropriate mechanism to facilitate withdrawal of the remaining FBU cases that are currently stayed pending the outcome of these test cases....we write to inform you that this very complex work has now been completed.'

The Circular also provided a copy of the settlement agreement (attached as an appendix to the report.)

4 Issues to note

The remainder of the circular issues in-depth guidance as to the process to be undertaken to complete the work and the information requested from Fire Authorities to enable this to happen. This includes the (approved) provision of detailed employee information to an independent third party company who will undertake much of the necessary correspondence and 'legwork' on behalf of the Service nationally. The HR department, along with technical support, are currently working on the provision of this information using the Resourcelink HR System.

The settlement agreement details the compensation payable to eligible employees for the terms and conditions claims including injury to feelings and the compensation payments are set at:

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

The compensation payment is paid on the eligible employee's role and length of service as at 30 June 2010 (for the period between 1 June 2000 to 30 June 2010). The minimum sum to be paid to an eligible employee is £150

The process of identifying, communicating with and settling claims with eligible employees is likely to take approximately 3-4 months from the date the third party company write to the employee concerned (estimated to start before the end of April 2011). This means our Authority can expect to have made the majority of payments by August 2011, and therefore have a full picture of the financial costs associated.

5 Financial Implications

Financial provision has been made by the Fire Authority within the Pensions Liabilities and Other Staff Issues Reserve from which to meet the cost of the claims of eligible employees. There will therefore be no impact on the revenue budget in 2011/12

6 Legal Comment

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (SI 2000/1551). Regulation 5(1) provides that a part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker. All retained firefighters should now be recognised and rewarded as part-time workers

7 Equality Impact Assessment

As this report refers to the settlement of an ongoing national legal action an Equality Impact Assessment is not necessary.

8 Appendix

Copy of Settlement Agreement

9 Background Papers

There are no background papers associated with this report.

APPENDIX A

IN THE EMPLOYMENT TRIBUNAL

Case No: 6100000/2001

B E T W E E N:

MR B R MATTHEWS AND OTHERS

Claimants

-and-

(1) KENT & MEDWAY TOWNS FIRE AUTHORITY

(2) THE ROYAL BERKSHIRE FIRE & RESCUE SERVICE

**(3) THE SECRETARY OF STATE FOR
COMMUNITIES AND LOCAL GOVERNMENT**

Respondents

**SETTLEMENT AGREEMENT BETWEEN THE FIRE BRIGADES UNION AND THE FIRST AND
SECOND RESPONDENTS**

RECITALS

1. This Agreement is made between the Fire Brigades' Union ("the FBU") on behalf of the Claimants and other employees or former employees of Fire Authorities (but excluding those employees who, as at 30 June 2010, were not then employed by any FRA and who have not presented a claim under the Part-Time Worker (Prevention of Less Favourable Treatment) Regulations 2000 ("the PTWR")) as described in Clause 1 and the Local Government Employers ("the Employers") on behalf of the First and Second Respondents, and all other Fire and Rescue Services in the United Kingdom.
2. On behalf of many thousands of its members the FBU brought claims on behalf of fire-fighters employed on a retained duty system under the PTWR ("the Claims") against both their members' employer Fire Authority ("FRA") and the Secretary of State for Communities and Local Government relating to their members' pension entitlements ("the Pensions Claims") and relating to their members' terms and conditions of employment ("the Terms and Conditions Claims").
3. This Agreement is only in settlement of the Terms and Conditions Claims and any other actual or potential claims arising under the PTWR from the Scheme of Conditions of Service of the National Joint Council for Local Authority Fire and Rescue Services ("NJC") as varied from time to time ("the Grey Book").
4. This 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.

IT IS AGREED AS FOLLOWS:

SCOPE

1. This agreement covers all Claimants in the Claims and all other current employees of FRA's (whether or not they are members of the FBU, but excluding members of the Retained Firefighters Union, which will enter into its own agreement in relation to the subject matter of this agreement) who were employed on a retained duty system (as such term is defined by the Grey Book) ("Eligible Employees") during any part of the period from 1 July 2000 to 30 June 2010 ("the Reference Period"), whether or not such employee is a Claimant for the purposes of the Claims. This agreement is also intended to amount to a collective agreement and will be incorporated into the contract of employment of every such Eligible Employee.
2. Eligible Employees do not include those employees who, as at 30 June 2010, were not then employed by any FRA and who have not presented a claim under the PTWR.
3. In the case of FRA's which operate a salary scheme in place of the Grey Book provisions for Eligible Employees, it is agreed that this Agreement shall settle any claims under the PTWR arising out of such salary schemes for the Reference Period and that, in consideration of the same and in respect of such salary schemes (and subject always to other provisions to pro rate the Compensation Payment set out in this Agreement), the Compensation Payments will not be pro-rated on account of the existence of such salary schemes for employees of such FRA.
4. The Respondents confirm that there is no material difference in the terms of this agreement to those being offered to all employed on a retained duty system irrespective of the trade union to which they belong or whether they are union members at all and irrespective of whether or not they have brought claims before the Employment Tribunal.

COMPENSATION

5. Each FRA shall make a payment (without deduction of tax or National Insurance Contributions) to their Eligible Employees by way of compensation for the Terms and Conditions Claims and any potential claim under the PTWR, including injury to feelings, taking into account both the Eligible Employee's role and length of service, as set out below ("the Compensation Payment"):

The Compensation Payments:

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

6. The Compensation Payment shall be based on the individual Eligible Employee's role as at 30 June 2010 (or, for Eligible Employees who were no longer employed as at that date, their rank/role held on the date of leaving service). The Compensation Payment shall also be applied pro-rata, against the Reference Period, to each Eligible Employee's aggregated length of service based on total complete weeks. If the Eligible Employee performed less than full cover as at 30 June 2010 (or the date of leaving service, if earlier) the Compensation Payment shall be adjusted on a pro-rata basis to take account of the percentage of cover provided by each Eligible Employee on 30 June 2010 (or if they left prior to 30 June 2010 the level of cover they provided on their date of leaving service), but to not less than 75%.

The minimum total Compensation Payment to an Eligible Employee shall be not less than £150.

7. The only exception to a Retained Employee receiving a Compensation Payment other than the Compensation Payment set out above is if "Non-Standard Circumstances and Previous Employment" apply. Non-Standard Circumstances and Previous Employment means (i) where an individual Eligible Employee has had a continuous period of sickness absence within the Reference Period (excluding any period of paid sickness absence for illness or injury arising out of authorised duty pursuant to paragraph 11 of the 6th edition of the Grey Book) which amounts to nine months or more; and/or (ii) where the individual is able to show that the way in which the Compensation Payment has been applied to the individual is incorrect; and/or (iii) if an Eligible Employee was employed by more than one FRA during the Reference Period and this has not been properly taken in to account in the original calculation.
8. If an Eligible Employee was employed by more than one FRA on a retained duty system during the Reference Period, the parties agree that, subject to either the current employing FRA providing information in accordance with clause 15 below or the Eligible Employee providing documentary proof of his/her service with another FRA during the Reference Period, the Eligible Employee's current employing FRA (or most recent employing FRA) will make a Compensation Payment which reflects all service under a retained duty system within the Reference Period.

MECHANICS

9. In order to achieve settlement of the Terms and Conditions Claims, and any prospective claims brought by Eligible Employees, the parties agree to use the settlement mechanism which has been agreed between them, in the form of a series of letters to be sent by the FBU to its members who are Eligible Employees, and by individual FRAs to their employees or former employees who are Eligible Employees set out in Appendix 1 to this Agreement ("the Mechanics Letters").
10. If Non-Standard Circumstances and Previous Employment apply to any Eligible Employee the process set out in the Mechanics Letters Agreement shall apply.
11. The FBU agrees that once an individual has accepted the terms and conditions part of the settlement, it will write to the Employment Tribunal (copied to the individual's employer), asking for the individual's Terms and Conditions Claim to be withdrawn and requesting that on such withdrawal the Terms and Conditions Claim should be dismissed.
12. Further, the parties agree that on signature of this agreement, the parties shall write to the Employment Tribunal asking for a hearing to be convened at which this Agreement will be explained to the Employment Tribunal who will be asked:
 - i. to stay all of the Terms and Conditions Claims for a period of six months, so that these terms of settlement may be implemented where they are agreed to by individual Claimants; and
 - ii. dismiss the Terms and Conditions Claims once they are notified that an individual has accepted the settlement and their Terms and Conditions Claim is withdrawn.
13. Where an Eligible Employee says that Non-Standard and Previous Employment Circumstances apply because of the way in which the compensation payment has been applied to them, he/she must first seek to agree the information/seek clarification from their FRA as to the correct figures. If this does not achieve resolution then he/she may also

access a Non-Standard and Previous Employment Circumstances process set out in the applicable Mechanics Letters depending on whether or not the Eligible Employee is a member of the FBU. The FBU acknowledge that in such cases payment will not be made until the matter has been resolved and that such situations are expected to be rare occurrences.

14. As provided for in Clause 1, it is acknowledged that there are three categories of Eligible Employees to whom the Mechanics Letters will be sent: (i) Claimants; (ii) Eligible Employees who are not Claimants and who are members of the FBU; and (iii) Eligible Employees who are neither Claimants, nor members of the FBU nor of the Retained Firefighters Union. Using an independent third party with experience of providing such information in compliance with the FRAs obligations under the Data Protection Act 1998, the FBU will send the Mechanics Letters to Eligible Employees within categories (i) and (ii). Individual FRAs will send Mechanics Letters to Eligible Employees within category (iii) using the same independent third party.
15. In order for the Mechanics Letters to be sent to Eligible Employees, each FRA will, within 35 days of the date of this agreement, send to the independent third party a list setting out the names and national insurance numbers of its Eligible Employees and, in respect of each Eligible Employee, (i) the most recent address; and (ii) the information for the purpose of the insert to Mechanics Letter 1 in an electronic format (.xls or .csv) as contained in Appendix A. Within the same period, the FBU will send to the independent third party a list setting out the names, national insurance numbers and most recent addresses for Eligible Employees within categories (i) and (ii) as set out in Clause 14.
16. The dates of payments will be in accordance with the timetable envisaged by the Mechanics Letters. Payments will in any event be made as early as is possible and within three months of the notification of acceptance of the offer to the relevant employer by or on behalf of the Eligible Employee and the claims being withdrawn in accordance with Clause 11.
17. The above will be subject to those paragraphs jointly identified within the Grey Book as being potentially discriminatory against part-time workers being amended to remove any potentially discriminatory effect.

FULL AND FINAL SETTLEMENT

18. The parties agree that this Agreement is in 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.

19. Subject to the provisions of Clause 8 being complied with, if an Eligible Employee has brought any claim under the PTWR against an FRA which previously employed him/her on a retained duty system, the parties will use their best endeavours to ensure he/she accepts the Compensation Payment paid by his/her current employing FRA in full and final settlement of all or any Terms and Conditions Claims the Eligible Employee may have against his/her previous employer FRA and shall withdraw such claims in accordance with the procedures set out in this Agreement.
20. This Agreement is not in settlement of issues relating to Eligible Employees' access to the Firefighters' Pension Scheme, or pensions generally, which are the subject of discussions between the FBU and the Third Respondent.
21. The parties agree that if a letter is sent by any party of an individual firefighter, it is deemed to have been received on the second working day after posting.
22. The parties agree that if any circumstance arises where arrangements are not in place to resolve the entitlement of an Eligible Employee, including the mechanics associated with doing so, they shall refer such matter to the Joint Secretaries of the NJC to consider and seek to resolve the same.
23. The parties agree that in the event an Eligible Employee has deceased any references to the Eligible Employee shall be taken as references to the Eligible Employee's personal representative who shall accordingly act in the Eligible Employee's stead.



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For and on behalf of the FBU

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Date **8 March 2011**



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For and on behalf of the Employers

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Date **8 March 2011**