

Re-employment of Operational Employees following Retirement

Report of the Chief Fire Officer

For further information about this report please contact Alan Taylor, Chief Fire Officer, on 01743 260201 or Louise McKenzie, Assistant Chief Officer on 01743 260280.

1 Purpose of Report

To request the Human Resources (HR) Committee, consider whether a policy of re-employment of operational employees following retirement should be introduced.

2 Recommendations

That having considered the contents of this report, Human Resources Committee make one of the following recommendations to the Fire Authority:

- a) Not to adopt a policy of re-employment of operational employees following retirement in any circumstances
- b) To adopt a policy of re-employment of all who apply, subject to positions being available
- c) To adopt a policy of re-employment of those who can fill a skills shortage and/or comply with other specified appropriate criteria
- d) To require those who wish to be re-employed to join the queue; i.e. to ensure that criteria for recruitment are met and not discriminating in favour of a single group.

3 Background

In April 2006 previous taxation rules limiting the opportunities for a person to draw pension and continue in employment were relaxed. As a direct result Shropshire Fire and Rescue Service (SFRS) has received queries as to whether a Firefighter can draw pension from the Firefighters' Pension Scheme (FPS) and continue in employment. Generally scheme rules must not allow members to take pension benefits before they reach the minimum pension



age. In the FPS the minimum pension age is 50 and in the New Firefighters' Pension Scheme (NFPS) the minimum pension age is 55.

The rules of the FPS (and subsequent NFPS) have not been amended in light of the change in taxation rules and it is still necessary for a firefighter to retire in order to draw pension benefits. The rules of the pension scheme do not however prevent the re-employment of a firefighter after retirement. This means that subject to the rules on minimum pension age and normal pension age being satisfied a firefighter may now technically retire, draw his/her pension and any commuted lump sum and be re-employed immediately. However there are several key points to note in accordance with Firefighters' Pension Circular (FPSC) 08/2006:

- Re-employment is at the discretion of the employing authority
- Retirement will constitute a break in service so membership of the FPS will be terminated
- *" Rule K4 makes provision for the abatement of a pension payable under the FPS for any period during which the pensioner is employed as regular firefighter with a Fire and Rescue Authority (FRA). The ODPM would expect the FRA with responsibility for payment of the pension to exercise their discretion to withdraw the whole or part of the pension on the principle that the annual rate of pay as a firefighter following re-employment plus the annual rate of FPS pension should not exceed the annual rate of pay as a firefighter received immediately prior to retirement"*
(Firefighters' Pension Scheme Circular FPSC 08/2006 dated 11 April 2006)
- It should be noted that if a Firefighter were to be re-employed he/she could choose to join the NFPS.

Members should also note that firefighters are currently able to apply for an extension of service provided they are fit for role. In this situation the employee's employment is continuous, there is no break in service and pension is only drawn at the eventual end of employment i.e. the point of retirement. This practice is also under review to ensure compliance with age discrimination legislation.

4 Factors for Consideration

There are several important factors to consider when determining whether or not to adopt a policy of re-employment of existing operational staff upon retirement.

Potential benefits to the organisation:

- Retention of experienced firefighters/other operational staff with considerable skills base
- Reduction in recruitment/training costs
- Maintenance of low turnover



Concerns:

- Such a policy is potentially discriminatory on grounds of age, gender and race
- There are other potential legal issues such as claims for unfair dismissal/ redundancy if re-engagement is immediate
- Re-employment would potentially be offered without a selection process and could therefore be discriminatory against those outside the predominant demographic group that make up retirees
- Maintenance of the status quo in terms of the workforce composition would restrict the organisations' opportunities to widen diversity of its workforce and, coupled with our generally low recruitment requirements, could significantly inhibit our ability to meet our national diversity targets and possible future National Framework objectives
- Maintenance of low turnover can sometimes be a barrier to effective culture change
- Staff who reach (pension scheme) retirement age already have the ability to remain in employment, but are not able to draw down pension benefits and do not have any break in service. This means that for many they are able to remain in employment until the terms of their pension scheme (FPS) mean that it is not in their financial interest.

5 Potential Policy Criteria

It is important to recognise that there is no automatic right to re-engagement. Should Members of the HR Committee wish to recommend the adoption of such a policy it is recommended that the decision to re-employ should, as a minimum, be based on the following factors:

- Consideration of the business need/exigencies of the Service at the time of application
- That the individual should possess key skills which Authority would find difficult to replace in short term
- Whether the individual is involved in a time bound project and if so, whether it would be of detriment to the Authority for the individual to retire during the course of the project.
- Individual past work performance and conduct record
- The health of the individual and an acceptable level of attendance (subject to Disability Discrimination Act requirements).
- That the individual is medically fit to perform the role and has not been retired on grounds of ill health (with or without an injury award).
- The impact of re-employing a retiree/retirees in respect of preventing promotion or development opportunities for other staff, or the development of the overall workforce diversity profile in relation to the wider community.



6 Fire Brigades Union Position

The local Fire Brigades Union (FBU) asked for the national FBU view on this matter at Conference and they received the following response:

“The text of the resolution passed at conference this year on pension abatement:

Conference demands that the Executive Council makes every effort to have any rule within:

- The Firefighters Pension Scheme
- The New Firefighters Pension Scheme
- The Local Government Pension Scheme

which allows abatement of our members pension payments, removed or amended to stop this practice.

Conference instructs the Executive Council that if this cannot be done by negotiation then legal action should be considered.”

The local FBU have expressed concerns on the impact the introduction of this policy would have on the Service

7 London Fire and Emergency Planning Authority’s Experience

London Fire and Emergency Planning Authority (LFEPA) have operated a “Re-engagement and extending service beyond retirement age” policy for some time however, this policy is currently suspended and they are not accepting any further applications.

An extract from the Human Resources, Equalities and Health and Safety Panel (LFEPA, 6 June 2007, section 1.6 regarding re-engaged officers) stated:

“The policy of re-engaging officers who have retired due to long term service began in April 2005. This allows operational staff to apply for a post retirement extension of service, at the Authority’s discretion and in light of organisational need. In light of recent age discrimination legislation the policy is currently under review and pending completion of that review it is not proposed to agree any further re-engagements,”

It is understood that on completion of the review this matter will be brought back before the relevant committee for a final decision on whether to re-instate or terminate the policy in September 2007.



8 Communities and Local Government Comment

The national Firefighters' Pension team are located within Communities and Local Government. They were contacted for advice as to how many Fire and Rescue Authorities (FRAs) have such a policy and to ask if they have received any advice as to the legal/equality issues. The response received stated they were unable to provide statistics but that the FRAs appeared to fall into 4 categories:

- a) Not re-employing in any circumstances (we understand that in most cases this is due to concerns about delaying ability to meet targets for women and ethnic minorities)
- b) Re-employing all who apply
- c) Re-employing those who can fill a skills shortage
- d) Requiring those who wish to be re-employed to join the queue i.e. to ensure that criteria for recruitment are met and not discriminating in favour of a single group

9 Financial Implications

There are potential financial savings in that under the current arrangements, re-employment of a retiree would lead to abatement of their pension because a firefighter cannot receive a pension **and** a salary. This saving would fall to Government and **not** the Fire Authority.

It should be noted that this may change should the FBU taken legal action on the matter as in indicated at their comment in section 6.

10 Legal Comment

This is a complex area of law that raises issues relating (inter alia) to Age Discrimination and Equal Opportunities legislation that are discussed more fully in the body of this report. It is extremely difficult to identify an exhaustive list of potential legal issues that may arise if a policy of re-engagement is adopted.

11 Equality Impact Assessment

An Initial Equality Impact Assessment has been completed and is attached to this report.

12 Appendices

There are no appendices attached to this report.

13 Background Papers

Firefighters' Pension Scheme Circular FPSC 08/2006 11 April 2006



Implications of all of the following have been considered and, where they are significant (i.e. marked with an asterisk), the implications are detailed within the report itself.

Balanced Score Card		Integrated Risk Management Planning	
Business Continuity Planning		Legal	*
Capacity	*	Member Involvement	
Civil Contingencies Act		National Framework	
Comprehensive Performance Assessment		Operational Assurance	
Efficiency Savings		Retained	
Environmental		Risk and Insurance	
Financial	*	Staff	*
Fire Control/Fire Link		Strategic Planning	
Information Communications and Technology		West Midlands Regional Management Board	
Freedom of Information / Data Protection / Environmental Information		Equality Impact Assessment	*





Shropshire Fire & Rescue Service EQIA number

Initial Equality Impact Assessment Form

Directorate	Human Resources, Training and Development	Department/Section	Human Resources
Name of officer	Louise McKenzie	Job title	ACO
Name of Policy/Service to be assessed	Retirement/re-employment	Date of assessment	20 August 2007
New or existing policy	N		

1. Briefly describe the aims, objectives and purpose of the policy/service	This report aims to explain the issues relating to the potential introduction of a policy of re-employment of (wholetime) operational retirees to enable Human Resources Committee to make an informed recommendation to the full Fire Authority.		
2. Are there any associated objectives of the policy/service?	No		
3. Who is intended to benefit from the policy/service and in what way?	Operational (wholetime) retirees, in that they would be able to take a commuted lump sum from their pension if they wish, and then, after the requisite break in service, be re-employed in the same/similar role they had left. They would have their monthly pension payment abated by their salary.		
4. What outcomes are wanted from this policy/service?	It is hoped that this paper will result in a considered decision on a policy recommendation to the full Fire Authority.		
5. Who are the main stakeholders in relation to the policy/service?	Members, managers, Human Resources, and operational staff (wholetime)		
6. Who implements the policy/service and who is responsible for this?	Human Resources, Managers		
7. Are there any concerns that this policy/service could have a differential impact on the following groups and what existing evidence do you have for this? Yes or No, please detail in boxes below.			
8. Age	Y	N	The pool of staff eligible to benefit from this policy will, by default, be aged 50 or over. It is therefore potentially discriminatory towards all other age groups who have not achieved retirement age under their pension scheme and means that 'new' firefighters through this scheme will be over 50

9. Disability	Y	N	The pool of staff eligible to benefit are less likely to have a disability than the general population because until 2004 individuals who became disabled were automatically retired from the Service. This means that 'new' staff under this scheme are less likely to be disabled.
10. Gender	Y	N	The pool of staff eligible to benefit are significantly less likely to be female than the general population. This means that 'new' staff under this scheme are less likely to be female
11. Race	Y	N	The pool of staff eligible to benefit are more likely to be white than the rest of the population. This means that 'new' staff under this scheme are less likely to be from a black or minority ethnic community
12. Religion or belief	Y	N	No identified impact in this area but on balance of probabilities 'new' staff under this scheme are less likely to have a different religion or belief than if they were selected from the general population
13. Sexual orientation	Y	N	No identified impact in this area
14. Dependant/caring responsibilities	Y	N	No identified impact in this area
15. Could the differential impact identified in 7-14 amount to there being the potential for adverse impact in this policy/service?	Y	N	Adoption of a policy of retirement and re-employment of operational (wholetime staff) could amount to potential for adverse impact on the workforce composition compared to if the retirees post was filled by a new appointee through a full recruitment process and open competition.
16. Can this adverse impact be justified on the grounds of promoting equality of opportunity for one group or another reason?	Y	N	It is difficult to justify the potential adverse impact given that staff who are nearing retirement age (under the pension scheme) already have the right to remain in employment without breaking their service, however they cannot draw down pension benefits without breaking service. The organisation would however benefit from retaining skills where there could be a skills shortage
17. Have you consulted those who are likely to be affected by the policy/service?	Y	N	The representative bodies would be fully consulted on the detail of any policy introduced. We have been approached by staff who are keen to take up the opportunity to retire and be re-employed should it be available. The FBU have provide comment in this paper
18. Should the policy proceed to a full impact assessment?	Y	N	Please detail
19. Date by which full impact assessment to be completed			



20. Reason for non completion	

I am satisfied that this policy has been successfully impact assessed.
I understand the Impact Assessment of this policy is a statutory obligation and that, as owners of this policy, we take responsibility for the completion and quality of this process.

Signed: (Assessing person)	Louise McKenzie	Date:	20/08/07
Signed: (Line Manager)		Date:	
Please note that this impact assessment will be scrutinised by the E&D Officer			

