

Hampshire Fire and Rescue Authority

Human Resources Committee

Item 8

19 January 2011

Re-employment of Grey Book Employees in the Firefighters Pension Scheme (FPS)/New Firefighters Pension Scheme (NFPS) and Green Book Employees in the Local Government Pension Scheme (LGPS) following Retirement

Report of the Chief Officer

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1 Summary

- 1.1 On 1 December 2006, in light of changes to tax Regulations Hampshire Fire & Rescue Service (HFRS) Service Management Team (SMT) and the Hampshire Fire & Rescue Authority (HFRA) Human Resources (HR) Committee agreed that for eligible staff employed under the national 'Grey Book' terms and conditions of employment may request to commute their pension lump sum and, following a break in service, be re-employed in their existing role. On 20 April 2007, the policy was extended to eligible Green Book employees.
- 1.2 It was also agreed that this policy would be reviewed on an annual basis to ascertain the impact on the Service's Equality and Diversity targets and career progression.

2 Recommendations

- 2.1 HFRS continues to offer re-employment to eligible employees but with additional terms and conditions within the policy which will take effect immediately.
- 2.2 Re-employment will be permitted for eligible employees who will be employed for a period of 11 months on a fixed term basis .
- 2.3 Employees who are re-employed on a fixed term basis may request to continue working in the same capacity beyond the end date of the fixed term contract. Where HFRS agrees to this, the individual will be required to take a further break in employment of at least four calendar weeks, then a new fixed term contract may commence for a period of 11 months.
- 2.4 This policy continues to be reviewed on an annual basis or earlier as may be needed to support the delivery of the Staff Review and/or Efficient and Flexible Crewing Project requirements.

3 Introduction and Background

- 3.1 Prior to 6 April 2006, tax legislation required any payments received from pension schemes as a lump sum payment to be paid as non-taxable if the employee actually retired. The advice given from Her Majesty's Revenue and Customs (HMRC) was that if employment was then taken up which utilised the skills from their previous employment (under which a pension was paid) then to all intents and purposes they were not 'retired' and as such could become subject to penalties over and above normal taxation rates.
- 3.2 From 6 April 2006, under the Tax Simplification Rules, employees were able to receive their lump sum from the pension scheme and could take up similar employment without incurring any penalties. In order to receive the lump sum payment the employee must retire from their present post, which requires a clear break in service. With effect from April 2010, the Service's policy is that a break of four calendar weeks must be taken. If, following this retirement, the employee is re-employed; their monthly pension payment is abated, either in part or in whole, whilst they are in receipt of a salary payment. The monthly pension payment is based on their final salary prior to any period of re-employment.
- 3.3 Employees who are re-employed can also request to join a pension scheme appropriate to their individual circumstances to build up benefits within that scheme under their new contract of employment. For Grey Book employees, this would be the New Firefighters' Pension Scheme (NFPS) if they are re-employed into the role of a Watch Manager or below. If they are re-employed into the role of a Station Manager or higher, or are a Green Book employee, they can request to join the Local Government Pension Scheme (LGPS). There is no provision to join the FPS.
- 3.4 The decision on whether or not to re-employ an employee who retires is for individual employers to determine.
- 3.5 The recommended adjustment to the policy allows eligible staff to still take advantage of the opportunity provided within the Tax Simplification Rules. However, the limited contract that is subsequently offered supports the current needs of the Service in financial constrained times. It is recommended that this policy continues to be reviewed on an annual basis.

4 Analysis of Data

- 4.1 Since the introduction of this policy in 2006 a total of 73 employees have opted to take their lump sum pension and commence re-employment to the same role. Of the 73 people who have taken re-employment, 50 are still employed in the same role as they were in prior to taking re-employment, and another 4 work for HFRS in a different capacity. Of this 73:
- 1 is a Green Book employee
 - 14 are firefighters (a 50% increase in 09/10)

- 28 are supervisory managers (CM/WM)
- 25 are middle managers (SM/GM)
- 4 are senior managers (AM and above)
- 73 are 'white British'
- 73 are male
- 73 are aged between 50 and 60 years

- 4.2 Of the 73, 10 have subsequently resigned since taking re-employment. When the policy was first introduced, approximately 50% of individuals taking re-employment left the Service altogether in the 12 months or so after. However, the data now shows year on year that there is a significant increase in individuals taking re-employment and remaining employed by HFRS for longer periods.
- 4.3 Over the next three years, a further 78 Grey book employees will become eligible to request re-employment, and 64 Green book employees.
- 4.4 The 73 individuals who have taken re-employment since the Service introduced this policy have been asked what their decision would have been upon reaching eligibility for retirement had re-employment not been available. Of the 73, 31 responded and 9 said they would have retired as soon as they became eligible. Another 3 said that would have continued in their employment for less than 12 months after becoming eligible and the remaining 19 said they would have continued in their employment for more than 12 months.
- 4.5 Other FRS's have been contacted to establish their policies, and any conditions attached, on re-employment. The information collected can be found in Appendix A of this document.

5 Contribution to Corporate Aims and Objectives

- 5.1 To ensure that the current policy does not have a detrimental impact on the Services' aim of achieving a more diverse workforce, it has been reviewed on an annual basis. There remains a need to maintain a balance between issues of age discrimination versus increasing diversity of the workforce. Whilst this is further considered below, it is a significant dichotomy for the overall corporate policy.
- 5.2 This policy impacts upon the Service's Efficient and Flexible Crewing (EFC) project and therefore Corporate Objectives 2 and 7 within the 08/09 Service Plan, as well as the 09/10 objective regarding the review of our staff numbers.
- 5.3 Over the last 12 months since this policy was last reviewed, the Service has commenced the Staff Review project, continued with EFC and Retained Duty System (RDS) Strategy projects, set up the Savings Team, rolled out Project Engage and has recently set up a Financial Challenge Programme Board led by the Chief Officer. All of these initiatives are concentrated on making efficiency savings and reducing HFRS expenditure due to forecasted public sector budget cuts.

- 5.4 Given that the largest cost to the organisation is salaries, HFRS is clear that a reduction in staff costs is required to achieve the savings. Allowing re-employment could be perceived as encouraging people to remain in employment with HFRS when they may have otherwise retired when they became eligible. However, the evidence suggests that the majority of eligible staff would remain in employment even if the option to re-engage was not available. Also for those that re-engage and don't take out a new pension there is a potential saving for the employer ranging from 14.2% to 26.5% for pension contributions.

6 People Impact Assessment

The revised People Impact Assessment for this policy indicates there are some risks and advantages to consider. These are as follows:

6.1 Risks

- 6.1.1 Continuing to allow re-employment could be a barrier to HFRS in its aim to increase the diversity of the workforce, and in particular could have an adverse impact on recruitment opportunities for the wider community. However, as the Service is not currently recruiting, and is unlikely to do so in the short to medium term, this risk is reduced at the current time.
- 6.1.2 As HFRS continues to concentrate on plans to reduce staff costs, whilst we have committed to contract via natural wastage, redundancies cannot be ruled out. If on one hand we end up having to make redundancies (voluntary as a first resort), and on the other we have a mechanism in place that could be perceived as encouraging employees to remain in employment, there is a potential conflict in messages. We also know that re-employment is most likely to benefit males, therefore female employees who face redundancy may have a case for sex discrimination by arguing that opportunities and encouragement for continued employment are more favourable for men. This dichotomy forms part of the logic of providing short term contract as a condition of re-engagement as there is increased flexibility in this. Future staffing needs would then dictate whether or not any further offers of contracts beyond the current one would be offered.
- 6.1.3 HFRS is currently over establishment on Firefighters based on our revised staffing levels under the EFC Project and if we were to work on the basis that all temporary promotion chains and secondments do not result in substantive appointments. That is if all employees in these positions have to return to their base posts. By continuing to allow re-employment, we could reduce expectations to achieve these reductions in our workforce via natural turn over in the time scales originally anticipated.
- 6.1.4 Current recruitment at firefighter level is limited given that the organisation is introducing EFC to utilise resources more effectively. There is a current freeze on whole-time firefighter appointments but recruitment continues within some retained service areas. There is some evidence that had they not been able to access their lump sum, some individuals who have taken re-employment may have retired and left the organisation permanently when they became eligible for retirement. It

could be considered that these employees are incentivised to take the re-employment option and continue working for the Service when they would have otherwise retired permanently. In general terms, this reduces the opportunity for the Service to recruit a more diverse workforce in the longer term, but more critically at present, to be able to reduce the salary costs through natural turn-over of staff. In light of the EFC project requirements, it is more that case that this policy slows down or delays the 'vacancy factor' that is planned for, rather than permanently stops it. It is on these grounds, and on the basis that employees who are eligible for re-employment are generally at the top of their respective pay bands (see 7.2), that the recommendation to alter the current arrangements is made. The limit of fixed term contract enables the organisation to flex it's staffing levels dependant upon future requirements dependant upon need.

- 6.1.5 This matter is being considered in various HFRS project groups including Establishment Group, EFC Project (risk log), our Appointment, Transfers and Promotions panels and the Staff Review project.
- 6.1.6 HFRS has been exploring how to widen the availability of flexible working options for employees, as Grey Book employees in particular have historically been employed on a full time basis only. Evidence suggests that a number of those Grey Book employees who have been re-employed under this policy have also requested part time working. There is a risk that, if all requests are allowed, all part time working options within the Service will be filled by this employee group (i.e. white British males over a certain age) therefore leaving restricted opportunities for other employee groups to alter their working patterns, or for the Service to employ people directly on a part time basis. This could affect the ability to attract diverse and under-represented employee groups in the future.
- 6.1.7 Direct re-employment without advertising a vacancy could be seen as not openly recruiting. However, if the Service did not allow re-employment, eligible employees could remain in work but just not have access to their lump sum pension. If this was the case, eligible employees could equally argue that they are being penalised for this, or discriminated against on the grounds of age as they were employed when the workforce was not so diverse (see below).
- 6.1.8 However, there is an argument that by continuing to allow re-employment, the Service's opportunity to attract younger employees to the Service is restricted. Whilst, there are no plans for recruitment currently, this policy is likely to have the medium to long term effect of slowing that process.
- 6.1.9 Retention of existing employees has potential to prevent recruitment of individuals on direct entry basis (i.e. recruitment for Grey Book roles of Crew Manager and above can now include external applicants who have not worked as a firefighter and worked their way up). Again, this could affect the ability to attract diverse and under-represented employee groups, although the immediate risk is reduced when HFRS is not planning to recruit in the short to medium term.
- 6.1.10 Promotion opportunities for existing staff can also be restricted currently for the same reasons as outlined above, as there is an argument that re-employment can

have the effect of 'blocking' promotion opportunities for more junior staff.

6.2 Advantages

- 6.2.1 Within the FPS, to be eligible for retirement employees must be aged 50 or over with at least 25 years reckonable service. However, to achieve the maximum pension benefits, they must have completed 30 years service. Where an individual became a member of the pension scheme before the age of 20 they will have to complete more than 30 years service to achieve the maximum benefits, but any contributions made after reaching the 30 year threshold do not offer any additional financial benefit. This could be considered discriminatory on the grounds of age.
- 6.2.2 However, this is not something that HFRS can influence, it is a stipulation of the pension scheme, therefore any risk of age discrimination is not likely to be carried by HFRS. The current arrangements of the pension scheme are being challenged nationally.
- 6.2.3 The policy can assist the retention and continuity of business critical specialist skills and knowledge within the Service that may be difficult to replace in the short-term. Retention of skills, knowledge and experience is a key requirement in order to achieve and continuously improve upon our standards of performance. However, a sound succession plan could also potentially deliver on this requirement.
- 6.2.4 There are savings on employer pension contributions ranging from 14.2% to 26.5% depending on scheme membership, plus reductions in recruitment and selection costs, training time and costs and for some staff groups the provision of protective clothing and safety equipment.
- 6.2.5 This policy is attractive to employees. Therefore those that are able to benefit from it are more likely to engage with the organisation more positively, which is especially important in the current challenging financial climate.

7 **Resource Implications**

7.1 Physical Resources

- 7.1.1 There is no impact on physical resources. Arguably, there is a cost saving as Grey Book employees who are re-employed will retain their existing Personal Protective Equipment which would otherwise have to have been purchased for new employees. In addition, there would be a cost saving on training for the same reason as employees who are re-employed would not require the same level of training as a new operational employee.

7.2 Financial Implications

- 7.2.1 Retirement and re-employment is attractive to pension scheme members because it gives them a tax free lump sum through commutation, whilst allowing them to remain in employment in the same or similar role. Potential positive financial

impacts are that it could result in increased movement from the FPS to the NFPS or LGPS where employer contributions are lower.

- 7.2.2 The overall cost implication is that individuals with the required length of service to take re-employment will almost inevitably be paid the maximum possible in their roles. For example, a Green Book employee is likely to be at the top salary point scale within their pay grade.
- 7.2.4 If HFRS no longer offered the option within the existing policy, but adjusted the terms and conditions of the re-employment policy, it is likely that some individuals would simply continue in their employment regardless. Others would leave in order to access their lump sum and pension but not choose to accept a temporary contract. If this were the case, the vacancy factor could increase at a faster pace and therefore reduce staff numbers via natural wastage. Others would opt for the revised terms of the policy and accept a temporary fixed term contract.
- 7.2.5 Where recruitment was necessary following retirement, although this is unlikely for the short to medium term future, any employment offered would be based on a lower salary and pension contributions would be less for HFRS, compared to the rates paid to the longer serving employee.

8 Consultation

- 8.1 Prior to the policy for re-employment being agreed in December 2006 formal consultation was undertaken with all relevant trade unions, i.e. the Association of Principal Fire Officers (APFO), the Fire Brigades' Union (FBU) including the Black and Ethnic Minority Members (B&EMM) section, the Retained Firefighters' Union (RFU), the Fire Officers' Association (FOA), Unison and GMB.
- 8.2 At that time, both APFO and the FBU confirmed their support for the facility for re-employment following retirement as it provides greater flexibility and choice for their members and consider the retention of talent and expertise outweighs any potential adverse equality impact. The RFU had no preferred approach, as they do not believe the policy impacts on their members. Unison, GMB, the B&EMM section of the FBU and FOA did not submit any comments. The views of a number of external organisations were also sought, including the Age Positive team at the Department for Work and Pensions (DWP), the Commission for Racial Equality (CRE), ACAS and the Equal Opportunities Commission (EOC).
- 8.3 No further consultation has been carried out since, as it is not considered necessary where little has changed with the circumstances of this policy. Any proposals made to change the existing policy, require consultation with Representative Bodies, although is a decision for the Service and not one of negotiation.

Background Information (Section 100D of Local Government Act 1972)

The following documents disclose the facts or matters on which this report, or an important part of it, is based and has been relied upon to a material extent in the preparation of the

report:

Firefighters Pension Scheme Circular 8/2006 – 11 April 2006

http://www.communities.gov.uk/pub/280/FPSC82006UpdateonamendmentstotheFirefightersPensionSchemeFPSandtheFirefightersCS_id1165280.pdf

Note: The list excludes: (1) published works; and (2) documents that disclose exempt or confidential information defined in the Act.

APPENDIX A

A selection of other Fire & Rescue Services were contacted to establish what their position is in respect of Re-employment. The following services have provided the detail below:

Surrey FRS

Consider applications for re-employment on a case by case basis.
Policy currently under review due to equality targets.
Require business case from the respective Head of Department.
Review of the individual personal file is conducted.
Decision based on whether suitable vacancy exists.

Avon FRS

Permitted at all levels below Principal Officer.

Kent FRS

Employment to any post after retirement is subject to normal recruitment practices, i.e. open and competitive process.

Where there is entitlement to immediate payment of pension following selection, employee is required to resign and can return into new post following 4 week break in service.

Oxfordshire FRS

Re-employment is normally only on a fixed term basis depending on business need. If a permanent contract is offered, this is only up until normal retirement age in NFPS (60 Years).
Performance and conduct are reviewed.

Strathclyde FRS

Recently withdrawn policy due to ongoing workforce planning issues.
Previously permitted re-employment.

Nottinghamshire FRS

Very rarely agree re-employment.
If agreed, it is only on a fixed term contract where business need exists.
Performance and conduct are reviewed.

Royal Berkshire FRS

Employment to any post after retirement is subject to normal recruitment practices, i.e. open and competitive process.
Temporary appointments in the first instance for 12 months.