

Status of Report: Public

Meeting: Combined Fire Authority

Date: 8 February 2023

Subject: Industrial Action update

Report by: The Chief Fire and Rescue Officer

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For: Information Only

Purpose

1. The purpose of this report is to update the Combined Fire Authority on the latest information regarding Industrial Action (including strike action) by the Fire Brigades Union (FBU).

Recommendation

2. It is recommended that:
 - a) the CFA notes the update in this report;
 - b) the CFA accepts the principle of partial performance (as part of legal industrial action) as detailed in paragraph 32 of this report and;
 - c) Delegated authority be given to the Chief Fire and Rescue Officer, Treasurer and Monitoring Officer to jointly determine the levels of stoppages of pay, based reasonably, proportionately and consistently on any partial performance action taken.

Executive Summary

3. The outcome of the FBU's strike ballot will be known in early February 2023, following which there will be a meeting of the National Joint Committee (NJC).
4. London Fire Brigade has made a local pay offer to its staff. This is for a 6% increase in pay for 2022/23 and a 5% increase in 2023/24. This offer is being considered by the FBU, but may cause some complications to the NJC and FBU.

Background

5. The Fire and Rescue Service has a strong tradition and links to trade unions and representative bodies. This is the case with both uniformed and professional support staff.

6. The links are heavily underpinned by nationally negotiated and agreed pay, terms and conditions of employment. This is achieved through National Joint Committees (NJC's) of which there are predominantly two covering the Fire Sector; one for uniformed staff (Grey Book terms and conditions) and one for professional support staff (Green Book terms and conditions).
7. The Employers side of the NJC is made up from elected members appointed by the Local Government Association. The Combined Fire Authority and the Chief Fire and Rescue Officer are only consultees in the business of the NJC; they do not vote or take part in the meetings and negotiations.
8. Green Book employees have previously voted to accept a pay rise. This was communicated and took effect from the November 2022 pay run. This was a flat increase of £1,925 to all roles plus an additional day of annual leave per year, starting from April 2023.
9. The NJC offer to Grey Book employees of 5% across all roles was put forward to the Fire Brigades Union (FBU). This offer was not centrally funded and would need to come from existing Fire Service's budgets. However, this would be challenging for most Fire Services/Authorities across the country.
10. The FBU ran a consultative ballot with its members, with a strong advisory message to reject the pay offer. The consultative ballot closed on 14 November 2022. There was a 78% turnout to the ballot and of this, 79% of the returned vote was to reject the offer of 5%.
11. On 15 November the FBU further communicated its anticipated timelines to formally progress the pay dispute;
 - 21 November - intend to submit letters to employers setting out a trade dispute with them on the issue of pay.
 - 28 November - intend to notify all employers of the intention to ballot FBU members for strike action.
 - 5 December - commenced a postal ballot of all FBU members with a recommendation for a 'yes' vote for strike action.
 - 30 January 2023 - close of ballot.
12. Subject to the outcome of the ballot the FBU will be required to give 14 days' notice of any intended strike action. In conjunction with the current timeline, this would mean that the first possible strike action would be in mid-February 2023. Any update will be reported at the meeting.

Latest developments

13. In mid-December 2022 central government published the provisional local government settlement which, amongst many other areas, included Fire and Rescue Services council tax flexibility and grant funding areas.

14. Following support from Members of Parliament for Leicester, Leicestershire and Rutland and across the country, the settlement acknowledged the pressures FRS's were under regarding inflationary pressures, energy, fuel, costs and uncertainty regarding the pay settlement.
15. The provisional settlement granted flexibility to CFA's to increase the council tax precept by 2% or up to £5, whichever is greater. It also clarified that the revenue support grant from central government would not be cut and was increased in line with inflation. This is for the financial year 2023/24.
16. It also went further to outline that CFAs could increase council tax precepts up to 3% (without referendum) in the following financial year of 2024/25.
17. The impact of this flexibility has dramatically improved the budget setting and forecasts for the sector and also Leicester, Leicestershire and Rutland; this was discussed by CFA members in the budget briefing workshop held on 11 January 2023.
18. Following the announcement of the provisional settlement by central government, London Fire Brigade has made a local pay offer to its staff. This is possible for a few technical reasons regarding their governance such as the London Fire Commissioner is the "employer" for London Fire Brigade and sits on the NJC as a national employer.
19. The local offer was 6% increase in 2022/23 and an additional 5% in 2023/24, totalling 11%. It should be noted that London Fire Brigade has already negotiated a 2% pay increase for additional duties regarding Marauding Terrorist Attack (MTA) responses across the London area.
20. This offer was submitted to the London FBU regional committee. It has subsequently been referred up the FBU hierarchy and channels and will be referred to the NJC at a national level.
21. It is not yet known how this will progress but it is possible that the FBU may decline the local offer and only negotiate on a national basis. This may put pressure on all FRS's to attempt to match the offer which may be achievable for some but is not possible for many without additional funding support from government. Equally, if the local offer is accepted it may lead to local negotiations across the country, with different expectations and settlements depending on the financial position of each FRS.
22. The NJC will be arranging meetings for early February 2023, once the outcome of the ballot is known. However, it is important to note that the Chair of the CFA and the Chief Fire and Rescue Officer are only consultees in this process and have no decision making powers.

Business Continuity Planning

23. Under the Civil Contingencies Act 2004 and the Fire Services National Framework document (2018), all Fire and Rescue Services are defined as

“Category 1” responders. This places a legal requirement on those responders to plan for “all foreseeable” risks and ensure that they are still able to perform their functions. Industrial action is considered as a foreseeable risk.

24. Under direction from the Combined Fire Authority, the Chief Fire and Rescue Officer has put in place business continuity arrangements that will ensure the CFA meets or surpasses the requirement placed upon it. The details of these arrangements were the subject of an exempt report which was presented to the CFA at its meeting on 28 September 2022.
25. As required the arrangements have been submitted to the National Resilience team and passed on to the Home Office for overview and scrutiny. The Home Office has not sought further information or assurance from the plans submitted.

Action short of strike

26. It is possible that as well as full periods of strike action, trade unions could take action short of strike. This can be very varied from role to role and each campaign will differ however, it can broadly be classified in two ways. The first is removal of “good will” and non-contracted elements of work. For example, (not an exhaustive list); -
 - No longer “acting up” to a role above substantive role when needed.
 - Ending periods of “temporary promotion”.
 - Declining pre-planned overtime shifts
27. This form of action is in line with individual contracted terms and conditions of employment and whilst disruptive to the Service, is an individual’s choice to undertake without any form of recourse.
28. The second way is when an employee chooses to undertake some of their contracted duties but not all of them, which is defined as partial performance. In the circumstances of partial performance, the CFA may require the employee to comply fully with their contract or stay away from the workplace without pay. However, the CFA may decide to accept partial performance and pay the employee only for the work they perform.
29. No form of legal industrial action is desired as it is disruptive to the workplace, relationships and the service provided to the community. However, it is recommended that the CFA would accept partial performance (if part of legal industrial action). This is to ensure that the best level of response and provision to meet statutory duties is available.
30. It is also recommended that delegated authority be given to the Chief Fire and Rescue Officer, Treasurer and Monitoring Officer to determine the levels of stoppages of pay, based reasonably, proportionately and consistently on the action taken.

Report Implications/Impact

31. Legal (including crime and disorder)

The Civil Contingencies Act 2004 places a requirement for Category 1 responders to plan for “all foreseeable risks” and to make plans to ensure they are able to “deliver their function in the event of an emergency”. The third party resilience contract ensures this requirement is met.

32. Financial (including value for money, benefits and efficiencies)

Financial risks were detailed in the report to the CFA on 28 September 2022. This information is subject to commercial confidentiality so not contained in this report.

33. Risk (including corporate and operational, health and safety and any impact on the continuity of service delivery)

As much planning and mitigation as possible has been put in place but the risks associated with, and impact of, industrial action remains high.

Whilst the Service will meet the guidance from the Home Office regarding levels of fire cover, this is still heavily reduced from normal cover across LLR. This will likely lead to increased attendance times, reduced ability to attend incidents and come at a financial cost.

The acceptance of partial performance is a way of minimising exposure to risks generated for industrial action. Having a workforce available in some capacity reduces community risks, even if this is 50%, 75% or 95% - it ensures the majority of service delivery will take place across LLR.

34. Staff, Service Users and Stakeholders (including the Equality Impact Assessment)

The “people” risks and impacts are difficult to directly quantify but are very significant and may run for significant periods of time. This will not be easy for staff and is also made more difficult by the current economic climate and pressures people are facing. Some staff may not feel able to strike (for personal and/or financial reasons) and others will feel incredibly passionate about it.

35. Environmental

There is the possibility for environmental impact in the event of significant incidents during periods of industrial action. Reduced number of fire engines and specialist capabilities to fight fires may lead to a significant environmental impact.

36. Impact upon “Our Plan” Objectives

The impact on our plan will be significant. In effect all work would cease in the Service with a focus entirely on operational response during periods of Industrial action.

Officers to Contact

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