



AGENDA ITEM: 8

NORTH WALES FIRE AND RESCUE AUTHORITY EXECUTIVE PANEL

5th February 2008

REVIEW OF THE AUTHORITY'S POLICY ON RE- EMPLOYMENT OF MEMBERS OF THE FIREFIGHTERS' PENSION SCHEME FOLLOWING RETIREMENT

**Report by Simon Smith,
Chief Fire Officer and Ian Miller, Clerk to the Authority**

1. Background

- 1.1** At a meeting with the Chief Fire Officer on 7th January 2008, the Chairman and Vice Chairman requested that a report be brought forward in response to concerns expressed by members of the Authority over the Authority's policy on re-employment of staff following retirement.
- 1.2** At the meeting of the Risk Reduction Plan Working Group on 8th January 2008, the Chairman advised members that a report would be available for this meeting in order that the Executive Panel could review the current arrangements. In particular, it was suggested that the level of decision making in the current policy should be reviewed.



2. Information

- 2.1** The existing policy, attached as Appendix 1, has its origins in the general level of dissatisfaction with the Firefighters' (formerly Firemens') Pension Scheme voiced by such bodies as the National Employers over many years but particularly in their modernisation agenda in the lead up to the 2002/3 national industrial dispute.
- 2.2** Amongst a number of concerns with the Scheme being expressed at that time was the age at which members of the scheme became eligible to retire, that is at 50 years of age provided they have completed at least 30 years of service. At that time there was also a compulsory retirement age (either 55 or 60 depending on the post held) attainment of which forced a member of the Scheme to retire irrespective of his/her wish to continue in service or their state of health. The subject was specifically referred to in the Independent Review of the Fire Service (commonly known as the "Bain Report") published in December 2002 which was commissioned by the UK government during the industrial dispute. The Bain Report formed much of the basis for the modernisation agenda that all fire and rescue authorities work under to this day.

"Employees who have accrued maximum benefits continue to contribute 11 per cent of pay to the pension scheme (there is still a pensions benefit from pay increases). As a result, the scheme tends to encourage retirement at a relatively young age and to discourage working much beyond the age of fifty.

...this means people are taking retirement when they still have much to offer."

(Independent Review of the Fire Service 2002, paragraph 9.5).



Information *(continued)*

- 3.** In the modernisation period following the industrial dispute, a new pension scheme, compulsory for all new entrants after April 2006, was introduced. This was accompanied by the abolition of the compulsory retirement age. Most members of the Service are, however, still in the old pension scheme (therefore subject to its provisions) and will continue to be so for the foreseeable future as theoretically the authority will still employ members of this scheme up to at least March 2036 and quite possibly beyond even that date (the numbers will obviously decrease over that period).

- 4.**
 - 4.1** The matter of the old scheme encouraging retirement at the age of fifty and completion of thirty years of service has been dealt with for the most part by governmental changes to the tax regime for pensions which came into force on 6th April 2006 and which were notified to fire and rescue authorities by way of a Firefighters' Pension Scheme Circular issued on 11th April 2006 by the Office of the Deputy Prime Minister. A copy of that circular is attached as Appendix 2 with paragraphs 3.1 to 3.5 inclusive being the relevant ones.

 - 4.2** The Welsh Assembly Government issued Fire and Rescue Service Circular W-FRSC (06) 12 on the same subject on 26th April 2006 which contained identical wording to the English circular. Therefore, both circulars recommended that fire and rescue authorities should either have a policy, or review existing policies, with respect to the retirement and re-employment of firefighters. These developments, together with a range of other tax and pension issues, were reported to the Executive Panel on 21st September 2006, a copy of the relevant section of the report being attached to this report as Appendix 3. The recommendations were accepted without amendment. Ten of the substantive members of the Panel were present with the addition of a substitute member, making



Information *(continued)*

a total of eleven out of a possible fourteen.

- 5.** As required by the resolution of the Panel, the Chief Fire Officer developed a policy (there was no pre-existing policy) and undertook the usual round of consultations with the relevant trade unions before the policy was adopted on 12th February 2007.
- 6.** The practical impact of the policy can be summarised as follows:
 - 6.1** Those members of the Firefighters' Pension Scheme who wish to can access their pension benefits, subject to the conditions identified in the policy, and continue in employment. It is vitally important to remember that the Authority is liable for payment of these benefits in any event so there is no question of there being an added financial burden on the Authority. In practice, what this means is that the individual can access his/her commuted entitlement. Under existing abatement rules, the individual will not be allowed to earn any more than the value of their salary whilst they remain in employment. Therefore, the individual does not earn full salary plus monthly pension.
- 7.** Thus, the Authority can benefit in a number of ways, such as
 - 7.1** Saving on the recruitment and training costs associated with appointing a replacement. As a general rule, it costs approximately £14,000 to recruit, train and equip a wholetime firefighter. A more senior appointment would normally not incur the same training costs but there may be additional costs in recruitment and equipment, thus an approximate cost of £24,000 for this type of appointment would be an appropriate guideline.



Information *(continued)*

- 7.2** Saving on the actual employment costs to the Authority (see paragraph 9).
 - 7.3** Retaining valuable skills and experience that would otherwise be lost to the Service.
 - 7.4** Being aligned with the requirements of age discrimination legislation, encouraging diversity in respect of the overall age profile of the Service.
 - 7.5** Being seen as a modern and considerate employer.
- 8.** The individual employee benefits as follows:
- 8.1** Accessing pension entitlements at a time that may be more appropriate for them in respect of domestic circumstances.
 - 8.2** Not having to leave the Service to access those benefits and thus continue to make a valuable contribution to the work of the Service. It may also be fair to assume that an employee who benefits from the added financial security that comes with this arrangement will be better motivated.
 - 8.3** Not having to see a diminution in pension benefits if they choose to carry on working. The Firefighters' Pension Scheme provisions mean that there is a reduction in pension benefits from the age of about 52 onwards. Prior to the policy, even those members of the Service who chose to forego pension entitlements they could have got through retiring at 50 and who stayed on at work, were forced by sheer financial circumstance to retire a couple of years later rather than see the value of their pensions reduce.



Information *(continued)*

- 9.** As of the date of this report, three members of the Service have accessed the policy and been granted re-employment. A breakdown of the costs involved is included as a confidential Part II item at Appendix 4. Members should note that it is possible for a re-employed firefighter to join another pension scheme for the duration of their re-employment. In the case of personnel at Watch Manager level and below, they may join the new Firefighters' Pension Scheme. Personnel above this level may join the Local Government Pension Scheme. This would ensure that such facilities as 'death in service' benefits would still accrue.
- 10.** In reviewing the policy, members may wish to consider the level at which decisions to allow personnel to access their pension entitlement and be re-employed are taken. In the formulation of the policy there was a straightforward read-across based on the level at which a normal or ill-health retirement would be dealt with. It may be more appropriate, particularly in the case of principal appointments, to introduce added robustness by extending member involvement to a level broadly comparable to that for initial appointments to those posts.
- 11. Advice on the legal position**

 - 11.1** The Authority has discretionary powers to re-employ a member of the Firefighters' Pension Scheme after retirement. As with all its discretionary powers, the Authority cannot illegally fetter the exercise of its discretion – for example by having a policy that discretion will never be exercised or a policy that says that discretion will never be exercised for a particular group of staff.



Advice on the legal position (*continued*)

- 11.2** While it is legitimate to set out criteria that will normally be followed, each case must be considered on its merits. This is reflected in the drafting of paragraphs 9.1 and 9.2 of the extant policy.
- 11.3** Information has been provided in the confidential Part II appendix about the three cases for re-employment that have been agreed under the extant policy. It is not possible to re-open cases where decisions have been taken legitimately in accordance with the policy, nor would it be appropriate to discuss the possible application of the policy in future in relation to a specific, identifiable individual in terms of whether or not that individual should be re-employed.
- 11.4** If the Panel wishes to amend the decision-making arrangements in paragraph 10.1.3 of the policy, it is free to do so. However, in the view of the Clerk to the Authority, it could be seen as excessive for decisions to be taken by a wide group of members – such as the whole Executive Panel or Fire and Rescue Authority – when decisions on senior appointments are usually taken by a smaller appointment panel. It would also seem anomalous to involve members in personnel decisions affecting staff below Assistant Chief Fire Officer level when they are not involved in their appointment or other decisions under the pension regulations.



12. Policy Document Review

- 12.1** In reviewing the policy document during preparation of this report, the Chief Fire Officer has concluded that some of the wording in Section 9 could be improved without altering the context of the Policy. Members will be invited to approve a recommendation asking the Chief Fire Officer to make these amendments.
- 12.2** In addition, updated advice received is that the requirement to have a break in service of at least one month (paragraph 10.3.2) is no longer necessary as the individual is, by definition, no longer a member of the Pension Scheme. The necessary amendments can be made at redrafting stage.

13. Recommendations

That:

- 13.1** Members recognise the financial and human benefits from the existing policy on re-employment following retirement.
- 13.2** The policy is revised to introduce member involvement in the case of Principal Officers in line with the suggestions made in paragraph 11.4.
- 13.3** That the Chief Fire Officer amends the wording of the policy document in Sections 9 and 10 as indicated in the body of this report.