

RE-ENGAGEMENT OF STAFF FOLLOWING RETIREMENT

SUMMARY

1. On 27th July 2018, the Fire Authority agreed that when the Chief Fire Officer and Chief Executive retired that they would offer to reemploy him to the same role on a temporary basis for an initial 2-year period, to a maximum of 4 years. The CFO retired with effect from 11th September 2018 and was reemployed on 15th October 2018.
2. At this meeting, Members requested further detail on the implications of reappointing staff at other levels in the Service following retirement. This paper lays out the issues and a set of proposals for the Authority to consider and agree.

RECOMMENDATIONS

3. That Members discuss the issues and consider the options laid out in this paper.

BACKGROUND

4. The Fire and Rescue National Framework for England 2018 states:

“Re-engagement of Senior Officers

6.7 The re-appointment of principal fire officers to the same or similar posts within the same fire and rescue authority, a short time after they have retired, has caused concern in recent years and increases costs for taxpayers. These individuals very often receive their pension benefits on retirement (such as their tax free lump sum) and then return on favourable terms, including an increase in take-home pay through avoiding paying employee pension contributions.

6.8 Fire and rescue authorities must not re-appoint principal fire officers after retirement to their previous, or a similar, post save for in exceptional circumstances when such a decision is necessary in the interests of public safety. Any such appointment must be transparent, justifiable and time limited.

6.9 In the exceptional circumstance that a re-appointment is necessary in the interests of public safety, this decision should be subject to agreement by a public vote of the elected members of the fire and rescue authority, or a publicised decision by the appropriate elected representative of the fire and rescue authority, taking into account the legislative requirements of PCC FRA Chief Fire Officer appointment procedures. The reason why the re-appointment was necessary in the interests of public safety, and alternative approaches were deemed not appropriate, must be published and the principal fire officer’s pension must be abated until they cease to be employed by a fire and rescue authority.

6.10 To ensure greater fairness and the exchange of talent and ideas, all principal fire officer posts must be open to competition nationally, and fire and rescue authorities must take account of this in their workforce planning.

6.11 While the above requirements only extend to principal fire officers, we expect fire and rescue authorities to have regard to this principle when re-appointing at any level.”

KEY POINTS AND PROPOSALS

5. The Workforce Plan highlighted areas of the Workforce where there were gaps, and as a result, significant work has been undertaken relating to recruitment of both frontline firefighters and operational staff at more senior levels. There are still issues around the filling of day duty roles at WM and SM and these posts remain a concern, although further work is being undertaken in recruiting from external sources.
6. The Diversity figures across the Service also remain a serious concern and there is a need to recruit externally to develop our workforce to reflect the community it serves.
7. The National Framework specifies that “principal fire officers refers to “those officers at Brigade or Area Manager level, and above, or those with comparable responsibilities to those roles”. In Humberside, that would relate to the whole Strategic Leadership Team. Members will be aware that following the National Framework does limit options around bringing staff in at very senior levels. However, it is proposed that there is no change to the current policy for these posts which follows the National Framework. That is that any re-appointment at Strategic level would be determined by the Authority after consideration, in the same way as the options relating to the Chief Fire Officer were considered, and that it would be in the interests of public safety.
8. A decision is sought from the Authority as to how decisions below that level would be determined, whilst paying due regard to the National Framework and fulfilling our legal obligations to not discriminate against candidates on the basis of their age. The Framework is clear that there is no requirement that Authorities should follow the same process for less senior roles. However, it does state that there is an expectation that Authorities would have regard to the principles laid out at paragraph 4 at all levels.
9. It is felt that it would be beneficial for there to be more flexibility around reappointments at a less senior level, in order to allow SLT to most effectively manage the needs of the Workforce Plan whilst managing the budget pressures anticipated. It is felt that the only time this would be beneficial to the Authority would be to best time recruit courses. Currently to effectively run a recruit course there needs to be a minimum of 20 recruits on the course. This means that the Service tends to recruit early in anticipation of potential forthcoming retirements and therefore is over-established for periods of time immediately after courses have been run. Whilst work will be undertaken to explore whether that number could be reduced by training staff from more than one Service or delivering training in a different way, if there was an option to reengage staff on temporary contracts to provide a more level establishment throughout the year, there would be a significant financial benefit to the Service.
10. It is therefore proposed that the Authority considers the re-appointment of staff below Strategic level to enable SLT to most efficiently manage the Workforce Plan, but only does so at Firefighter level, and only to provide short term cover until such a time that there are enough vacancies to efficiently run a recruit course.
11. No application for re-engagement would be considered when submitted prior to the individual retiring from the Service and re-engagement would not be accepted for those who have been retired for longer than 12 months, unless they can demonstrate that they have maintained their competence for the role in question.
12. It is proposed that all posts would be short term and strictly time limited, pension rules around abatement are followed dependent on the individual schemes and that an Equality analysis should always be undertaken by the manager proposing a re-engagement decision to consider the impact on equality issues of that decision.
13. It is anticipated that re-appointment at Firefighter level, in the way described, would be beneficial for around 12 months and therefore Members could defer a decision, or consult more widely prior to making a decision.

14. Options for the Authority:

- Take the decision that re-appointment at all levels could only be carried out in line with the National Framework requirements for Senior Officers. In that instance the Authority would take the decision if one was to be considered;
- Defer the decision until such a time that it is known to be beneficial for financial planning. That will mean that current budgets will be planned assuming all recruitment occurs in the same way as at present (i.e. recruitment will take us over establishment) and so potential savings from this approach could not be factored in when considering future efficiency requirements;
- Take the decision that at Firefighter level only the Authority would re-appoint retired Firefighters where it was financially beneficial to do so and delegate that decision to Officers to manage. In that case the process for implementing the decision would be subject to consultation with Representative Bodies through the Service's Joint Consultative Committee;
- Take the decision that at Firefighter level only the Authority would re-appoint retired Firefighters where it was financially beneficial to do so, but that the Authority would consider whether it was required prior to each proposed plan for using re-appointments being implemented. In that case the Authority may wish to consult on a process for implementing that with Representative Bodies

STRATEGIC PLAN COMPATIBILITY

15. It is important for the success of the Service's Strategic Plan that appropriate staff are employed in the right roles as per the Workforce Plan. This proposal will assist the Service in doing so.

FINANCIAL/RESOURCES/VALUE FOR MONEY IMPLICATIONS

16. The savings that this approach may achieve are dependent upon the retirement profile in the Service at the time. An analysis for the next three years suggests that it could save around £200k over that period.

LEGAL IMPLICATIONS

17. This is a complex question legally, as there is a potential for staff who are not employed for roles based on their retirement status could bring a claim to the Employment Tribunal of age discrimination. As this has not yet happened in relation to the Fire and Rescue National Framework for England 2018, this would be a test case in the Tribunal. There is also a question of the definition of "due regard" in terms of the responsibility the Authority would have in following the Framework to the letter and then the interpretation of the Framework wording itself.

EQUALITY IMPACT ASSESSMENT/HR IMPLICATIONS

18. Allowing a process for staff to return to work could potentially avert an adverse age discrimination claim.
19. Conversely, the retention of staff in the current workforce longer than was required could have implications for changing the makeup of the Workforce to better reflect the community it serves. Ensuring that no re-engagement application is approved unless it has been subjected to robust equality analysis is crucial in ensuring that this process has no impact on developing a more diverse workforce. It is also important to ensure that staff are only re-appointed on fixed term contracts until such a time that sufficient vacancies exist to allow a recruit course to be run efficiently.

CORPORATE RISK MANAGEMENT IMPLICATIONS

20. There is a corporate risk that the Service is perceived to be acting outside of the spirit of the Framework, should the proposal be accepted, particularly given the recent decision to allow the re-engagement of the Chief Fire Officer and Home Office interest in this decision.

HEALTH AND SAFETY IMPLICATIONS

21. None directly arising.

COMMUNICATION ACTIONS ARISING

22. Following the decision by the Fire Authority, the outcome will be appropriately communicated to the Workforce.

DETAILS OF CONSULTATION AND/OR COLLABORATION

23. Consultation responses from Representative Bodies have been generally opposed to re-appointing staff at any level, and the FBU specifically raised concerns about this being used as a means to retain staff in day duty roles as opposed to exploring why existing staff don't wish to go onto that duty system. As a result the paper has been significantly changed from the one previously considered by Members and the recommendation is now that re-appointment is only considered at Firefighter level, and even then only with a fixed term contract until there are enough vacancies for a recruit course to be run, to ensure that the long term improvements in the diversity of the Service that we are seeing continue.

BACKGROUND PAPERS AVAILABLE FOR ACCESS

24. The Fire and Rescue National Framework for England 2018.
Representative bodies' responses to the previous paper.

RECOMMENDATIONS RESTATED

25. That Members discuss the issues and consider the options laid out in this paper.

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