To: Chief Fire Officers  
Chief Executives/Clerks to Fire Authorities  
Chairs of Fire Authorities  
Directors of Human Resources  

Members of the Employers’ Side of the NJC  

11 July 2013

CIRCULAR EMP/10/13

Dear Sir/Madam,

PENSION SCHEMES REFORM
FIRE BRIGADES UNION – BALLOT FOR INDUSTRIAL ACTION

1. Circular EMP/07/13 related to the trade dispute that exists between the Fire Brigades Union (FBU) and Ministers on the matter of reform of fire service pension schemes. It provided information on the recent letter from the Fire Minister in England to the FBU and noted that the union’s Executive Council would meet the week commencing 8th July to consider its response having consulted with members through its structures.

2. You will be aware that fire service pensions schemes are not a matter for the NJC, however industrial relations is.

Current position

3. With that in mind, the FBU advised us yesterday of its decision to ballot its members on the potential for national strike action. Authorities were notified of this and advised that a circular would follow.

4. FBU members who are not members of (or are not eligible to be members of) the FPS/ NFPS/2015 scheme will not be included in the ballot e.g. control staff. Neither will this ballot include its members in Northern Ireland.

5. The ballot will commence on 18th July and will run until 29th August.

6. With the exception of Northern Ireland, the FBU has also written again to Ministers registering a trade dispute. We understand this reiterates the 7 points of dispute (ref. circular EMP/6/13). However in addition, the matter of resolution to the pension aspect of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations long-standing employment tribunal cases will now be included in the trade dispute.
7. Whilst we would hope that industrial action will not be the outcome of the ballot, authorities will wish to make preparations for such a possibility.

8. Circular EMP/06/13 made reference to the LGA’s Guide to Industrial Action, which would assist in assessing the impact and implications of an industrial dispute, and deciding upon the appropriate response within the joint context of employment legislation and good industrial relations practice. A copy of the guide can be found on the website:

http://www.local.gov.uk/web/guest/employment-relations/-/journal_content/56/10171/3510449/ARTICLE-TEMPLATE

9. Furthermore, the circular advised that we had prepared service specific guidance which authorities may also find helpful. For ease of reference that information is now provided below.

**Deductions from pay**

10. Authorities will wish to ensure that:
- employees are warned in advance of any pay deductions to be made
- employees covered by the industrial action are given the opportunity to disassociate themselves from the action before the deductions are implemented
- the amount and reason for the pay deduction is explained clearly
- pay deductions are made at the earliest opportunity

11. Pay deductions information contained below relates to the shift systems contained within the Grey Book.

12. In the event of strike action an authority will need to make an appropriate deduction from pay as an equitable set off to reflect loss suffered. The principle of non-payment is straightforward and applied by all employers. Problems can arise however in calculating an appropriate amount of money to deduct. An authority will need to deduct a proportion of pay according to the proportion of the working week spent on strike. The appropriate hourly rate calculations are shown below:

**Shift system**

\[
\text{Annual salary} \div 52.143 \div 42 = \text{hourly rate}
\]

**Day crewing system**

Same as wholetime above. For additional retained duties – see retained section below.

**Flexible duty system.**
This will vary from one authority to another depending on the average number of hours worked per week. The appropriate hourly rate deduction for managerial hours and standby hours will be different.
Managerial hours

Basic annual salary $\div 52.143 \div \text{Nos. of positive hours per week} = \text{hourly rate}

Standby hours

Flexible duty supplement $\div 52.143 \div \text{Nos. of standby hours} = \text{hourly rate}

Day duty shift system

Annual salary $\div 52.143 \div 42 = \text{hourly rate}

Retained firefighters

Retained firefighters taking strike action will obviously not be entitled to turn-out or attendance fees in relation to the unattended incident/s that fall during that period of strike action. Neither will they be entitled to drill night fees. In addition, an adjustment should be made to the retaining fee to reflect the period of non-availability. The basis of this calculation will depend upon the registered availability of the individual retained firefighter:

\[
\frac{\text{Annual retainer}}{\text{Nos. of hours registered as available}} = \text{hourly rate}
\]

Sickness absence

Statutory Sick Pay

13. Employees who are absent from work through illness before a stoppage of work retain their right to statutory sick pay (SSP) during the period of industrial action provided they take no active part in the dispute. Where, however, an employee is away from work because of a trade dispute when their sickness begins, they are excluded from SSP, except where he or she has no ‘direct interest’ in the dispute and has not participated in it at any time.

14. If an employee returns to work after industrial action and then goes off sick, the average earnings for SSP purposes will reflect the lower earnings during the action, as SSP payments are based on earnings during the previous eight weeks of employment.

Occupational Sick Pay

15. Employees have no rights to conditions of service benefits when they are on strike. An authority must put in place procedures which make it clear whether it considers an employee is taking industrial action or is on sick leave.

16. Employees who are absent on account of sickness before industrial action starts should be assumed to be on sick leave, providing that necessary certification is produced. If the employee reports as sick on the day the action starts, the authority will need to make its own judgement, taking into account any evidence that the employee can provide, whether he or she should be regarded as on sick leave or on strike.
17. Authorities may wish to introduce new arrangements for reporting sickness immediately before and during a period of industrial action and will need to if they want to treat this differently from the norm. For example, an authority may introduce a requirement that all periods of absence should be supported by a doctor’s certificate from the first day of absence. In such cases, it would be advisable for the authority to offer to pay for any charge made by the doctor to ensure that the change in the sickness reporting arrangements are seen to be fair and reasonable in the circumstances. Authorities will also need to consider if the person to whom notification should be made will need to be changed. Such a policy should be introduced in advance of any industrial action.

Annual Leave

18. Where strike action begins during a period in which an employee is on annual leave, then in the absence of evidence to the contrary, he or she should be deemed to be on leave and not on strike. Authorities will need to be careful about agreeing to annual leave for employees requesting it just before, or on, the day strike action starts. Authorities may wish to have a policy of refusing requests for leave by striking employees during the period of industrial action.

Rota days

19. If an employee takes part in a strike that has started before his or her rota day, then it can be assumed that he or she is taking such action on the rota day if the strike continues into this day. If, however, the strike starts on a rota day, the authority may decide, in the absence of any other information that the employee is not taking industrial action until the time when he or she fails to report to work when rostered.

20. In terms of deductions from pay, no deduction should be made in respect of rota days. The employee is not expected to attend work on those days and therefore it would not be appropriate for an authority to seek compensation from the employee.

21. Discussion with CLG has identified that the day would count for the calculation of pensionable service.

Action short of a strike

22. There is no suggestion at present that action short of a strike will also be balloted upon. However, in case that does become the case at a later point in time, we also provide the information below.

23. An employee taking strike action has no entitlement to pay during the periods in which action occurs. An employee taking industrial action short of a strike in breach of their contract, e.g. responding to emergency calls only, will have no entitlement to any pay if the authority decides to refuse to accept the partial performance of the contract.

24. Where the employer allows an employee to continue working, they will have an entitlement to reduced pay.
25. Where pay deductions are made, these should at all times be reasonable (i.e. a reasonable reflection of the work lost/damages caused).

26. Clearly one of the most important factors for fire authorities in deciding whether or not to accept partial performance will be protection and safety of the public.

**Pensions**

27. DCLG has advised that it is for each Fire and Rescue Authority to ensure that it complies with the Scheme rules. However, informally, the following information has been provided to the LGA.

28. As far as the Firefighters Pension Scheme (FPS) is concerned, any absence on strike for a day or more will not count as pensionable service.

29. A pension scheme member may, by giving written notice to the authority within 6 months, require them to reckon as pensionable service all or part of the period they were absent ("the reckonable period"). Rule F2(4) then sets out that he/she must, within 6 months of giving that notice, pay the authority the contributions he/she would have paid for the reckonable period if he/she had been paid at his/her normal rate, and the amount that would have been payable by the authority in accordance with rule G2(3), in respect of his/her service for that period if he/she had been paid at his/her normal rate. The authority should notify the member of that amount. An authority has the discretion, under rule F2(5), to elect to pay the employers' contributions in place of the member should it wish to do so.

30. The rules for the New Firefighters Pension Scheme (NFPS) are set out in Part 10, rule 4 and we have been advised set out the same treatment as described under the FPS.

31. If strike absence takes the form of complete days, then each complete day of absence will be omitted from the total pensionable service. If strike absence takes the form of lesser periods, for example one-hour strikes, the application of pension rules becomes more complicated. For example, a firefighter takes part in a one-hour strike on five individual calendar days. He/she would receive pensionable pay for the five days but with the equivalent of one hour’s pay deducted from each day’s pay. FPS rule G2 (NFPS rule 3 of Chapter 1 of Part 11) requires that the firefighter should pay contributions on his/her pensionable pay. So on each of the five days he/she would pay contributions on what is actually paid for the day, i.e. normal pensionable pay minus one hour’s pay. FPS rule A7 (NFPS rule 6 of Part 10) says that for the purposes of calculating an award by reference to any period in years, the period shall be reckoned as A + B/365 years where –

A is the number of completed years in the period, and

B is the number of completed days in any remaining part of a year.
Therefore, even though contributions have been paid for part of them, the days will not count at all because they are not completed days. However, the same option to give notice and pay the employee and employer contributions for that period (as set out for the full days above) applies.

Further advice

32. In order to ensure as prompt a response to queries as possible, authorities are reminded that queries should be addressed to firequeries@local.gov.uk

33. Authorities will be mindful that this is a dispute between Ministers and the Fire Brigades Union and therefore comment on the substance of difference and/or potential resolution is difficult and potentially inadvisable in any case. You may however wish to provide employees or the media with factual information or to point them in the direction of where such information can be found. For example, since the reference issued in our last circular, DCLG has prepared further information on its website, which includes detail of the pension scheme from 2015 as well as a frequently asked questions factsheet:

https://www.gov.uk/government/publications/firefighters-pension-scheme-reforms

Yours faithfully,

Gill Gittins
Principal Negotiating Officer