



LONDON FIRE BRIGADE

Decision title

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## **Buy-back of Pensionable Service; Firefighters Pension Schemes; Industrial Action 2013-15**

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Recommendation by  
Assistant Director of People Services

Decision Number  
LFC-0398-D

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Protective marking: **NOT PROTECTIVELY MARKED**

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### **Summary**

Report LFC-0398 explains that operational staff, who were members of the Firefighters Pension Schemes (1992 and 2006) and who took strike action during the national Fire Brigades Union (FBU) pensions dispute between 2013-15 (the relevant period) lost one day's pensionable service for each full or part-day of strike action. Under the 1992 and 2006 firefighters pension scheme (FPS) regulations, there is an entitlement to buy back this pensionable service on provision of written notice, in which case the individual must pay both the employee's pension contribution and the employer's pension contribution for the relevant period. The employer has discretion to pay the employer's contribution for the relevant period.

This report recommends that all serving operational staff who lost pensionable service in the 1992 and 2006 firefighter pension schemes on account of taking strike action during the relevant period are given a six-month deadline for them to confirm whether or not they wish to buy back the pensionable service lost, and where this is requested, the relevant amounts are paid over the following six months in six equal instalments. The report recommends that the London Fire Commissioner does not exercise discretion to pay the employer's pension contribution, and therefore that the employer's pension contribution is paid by operational staff who wish to buy back the pensionable service for the relevant period.

### **Decision**

That the London Fire Commissioner:

1. Agrees that all serving operational staff who lost pensionable service in the 1992 and 2006 firefighter pension schemes on account of taking strike action during the national FBU pensions dispute between 2013-15 are given a 6-month deadline for them to confirm whether they wish to buy back the pensionable service lost. Where this is requested, the relevant amounts are deducted from salary over the following six months in six equal instalments.

2. Does not exercise discretion to pay the employer's pension contribution where employees elect to buy back pensionable service under recommendation (1).



**Andy Roe**  
London Fire Commissioner

Date **This decision was remotely signed on Monday 24 August 2020**

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LONDON FIRE BRIGADE

Report title

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## **Buy-back of Pensionable Service; Firefighters Pension Schemes; Industrial Action 2013-15**

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Report to	Date
Operational Delivery DB	16 July 2020
People DB	20 July 2020
Corporate Services DB	21 July 2020
Commissioner's Board	29 July 2020

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Report by	Report number
Assistant Director, People Services	LFC-0398

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### **Summary**

Operational staff, who were members of the Firefighters Pension Schemes (1992 and 2006) and who took strike action during the national Fire Brigades Union (FBU) pensions dispute between 2013-15 (the relevant period) lost one day's pensionable service for each full or part-day of strike action. Under the 1992 and 2006 firefighters pension scheme (FPS) regulations, there is an entitlement to buy back this pensionable service on provision of written notice, in which case the individual must pay both the employee's pension contribution and the employer's pension contribution for the relevant period. The employer has discretion to pay the employer's contribution for the relevant period.

This report recommends that all serving operational staff who lost pensionable service in the 1992 and 2006 firefighter pension schemes on account of taking strike action during the relevant period are given a six-month deadline for them to confirm whether or not they wish to buy back the pensionable service lost, and where this is requested, the relevant amounts are paid over the following six months in six equal instalments. The report recommends that the London Fire Commissioner does not exercise discretion to pay the employer's pension contribution, and therefore that the employer's pension contribution is paid by operational staff who wish to buy back the pensionable service for the relevant period.

### **Recommended decision(s)**

That the London Fire Commissioner:

1. Agrees that all serving operational staff who lost pensionable service in the 1992 and 2006 firefighter pension schemes on account of taking strike action during the national FBU pensions dispute between 2013-15 are given a 6-month deadline for them to confirm whether they wish to buy back the pensionable service lost. Where this is requested, the relevant amounts are deducted from salary over the following six months in six equal instalments.
2. Does not exercise discretion to pay the employer's pension contribution where employees elect to buy back pensionable service under recommendation (1).

## **Background**

1. Between 25 September 2013 and 25 February 2015 the FBU took discontinuous national strike action on 49 separate occasions ranging in length between 1 hour and 8 days in pursuit of their industrial dispute over the introduction of the 2015 Firefighters Pension Scheme. Under the transitional protection arrangements linked to the 2015 Firefighters Pension Scheme (the transitional provisions), existing members of the 1992 and 2006 Firefighters Pension Scheme who were not age 45 or over (1992 scheme) or age 50 or over (2006 scheme) as at 01 April 2012 were subject to transfer into the 2015 scheme.
2. The 2015 Firefighters Pension Scheme was implemented on 1 April 2015. Following its implementation the FBU commenced legal action against the government and fire and rescue service employers over the transitional provisions which were implemented to protect those closest to retirement age. The FBU's action over the transitional provisions was on the grounds of age discrimination, equal pay, sex discrimination and race discrimination. The case progressed from the Employment Tribunal to the Employment Appeals Tribunal to the Court of Appeal. The Court of Appeal handed down its judgment in December 2018 making a finding of unlawful age discrimination in respect of the transitional provisions. The equal pay claim was not upheld, with the outcome of the sex/race discrimination claims dependent on the outcome of any appeal.
3. In June 2019 an application made by the government to the Supreme Court seeking permission to appeal the Court of Appeal's ruling was refused on the basis that there was no arguable point of law raised.
4. The case was then remitted back to the Employment Tribunal to determine remedy. A remedy hearing was scheduled to take place in July 2020 but has been adjourned owing to the current coronavirus pandemic.
5. In December 2019 the Employment Tribunal set out a draft consent order which stated that the claimants will be entitled to be treated as if they remained in the 1992 Firefighters Pensions Scheme. In March 2020, the Economic Secretary to the Treasury, John Glen MP, reaffirmed the government's commitment to remove the discrimination retrospectively. He stated that detailed proposals would be published later in the year and be subject to public consultation. He also stated that members of public service pension schemes with relevant service would not need to make a claim in order for the eventual changes to apply to them.
6. Whilst the fire and rescue service employers still have an appeal outstanding in the Employment Appeals Tribunal under Schedule 22 of the Equality Act, which is a defence in the age discrimination claim that the employers were obliged by legislation to act as they did in implementing the pension transitional arrangements, and so should not be liable, the FBU's pension dispute against the government (and in effect the transitional provisions) is effectively over, and the Brigade now needs to conclude the process of allowing FBU members to buy back pensionable service lost during the 2013-15 industrial action.

## **The regulations on buy-back of pensionable service**

7. The 1992 Firefighters Pension Scheme regulations include the following:

### **Rule F2**

(2)(d) A person is not entitled to reckon as pensionable service ....subject to paragraph (3) ...any period of absence from duty without pay.

(3) A regular firefighter may, by written notice given to his employing authority within six months of returning to duty after a period of absence without pay (excluding absence for maternity, paternity or adoption leave), require them to reckon as pensionable service all or part of that period (the "reckonable period").

(4) Where notice is given under paragraph (3), the firefighter shall, within 6 months of giving that notice, pay to the authority—

(a) the contributions that *[they]* would have been liable to pay in respect of the reckonable period (in accordance with rule G2(1)) if *[they]* had been paid at his normal rate; and

(b) subject to paragraph (5), such amount as shall be notified to *[them]* by the authority as the amount that would have been payable by them, in accordance with rule G2(3), in respect of his service for that period and if *[they]* had been paid at *[their]* normal rate

(5) A fire and rescue authority may pay the amount notified under sub-paragraph (b) of paragraph (4); and where they do so, the requirements of that sub-paragraph shall cease to apply.

8. The 2006 Firefighters Pension Scheme regulations include the following:

### **Part 10**

3. The following periods are not reckonable as pensionable service—

(a) any period of unpaid leave, other than a period that is reckonable by virtue of rule 4 of this Part;

...

4. (1) A firefighter member may reckon as pensionable service all or part of a period of absence without pay if *[they]* elect to pay the pension contributions that *[they]* and *[their]* employing authority would have paid in accordance with Parts 11 and 13 in respect of that period if it had been a period of absence with pay.

(2) An election under paragraph (1) is to be made by written notice given to the employing authority not later than six months from the end of the period of absence without pay for which contributions are due.

(3) An authority may pay the employer's pension contributions that would otherwise fall to be paid by the employee as a result of *[their]* election.

(4) Contributions falling to be paid by the employee under this rule must be paid within six months of the date on which the notice under paragraph (2) is given.

9. In summary, under both the 1992 and 2006 schemes notice of a request to buy back pensionable service lost as a result of unpaid absence must be provided not later than six months from (a) returning to duty after a 'period of absence without pay' (1992 scheme); or (b) the end of the 'period of absence without pay' (2006 scheme). It is submitted that these dates are open to interpretation when there is a long-running dispute with multiple periods of unpaid absence, and the dispute may not be concluded even after the most recent period of strike action. The Brigade did receive 1,523 requests to buy back pensionable service in 2014 six months after the initial strike date in September 2013, however as the dispute was continuing at the time, and the intention was to arrange for buy-back in one single process following the conclusion of the dispute, these were not actioned at the time.

10. The regulations also provide a six-month period for the contributions falling due to be paid.

11. The recommendation within this report is that all current staff who lost pensionable service in the 2013-15 dispute are now given a deadline of 6 months to buy back that pensionable service on the basis that the 'period of absence without pay' has concluded now that the FBU's dispute with

the government is effectively over. It is also recommended that once a request to buy back pensionable service is made, the relevant payments are deducted from salary over the following six months in six equal instalments.

12. Under both the 1992 and 2006 regulations the default is that the employee pays the employer's pension contribution when buying back the pensionable service, however the employer has discretion to pay the employer's contribution. The Brigade has never paid the employer's pension contribution when previous periods of pensionable service in respect of strike action have been bought back, and it is not recommended this is done on this occasion. The costs involved are set out below, paragraph 15.
13. Pending the Brigade formalising buy-back of this pensionable service, Payroll have been allowing leavers to buy back this pensionable service on an individual basis, requiring the employee to pay the employer pension contribution (as the default arrangement under the pension schemes, and as this has been the practice for previous strike periods). See paragraph 14, group (c), for the number of employees where this has been actioned to date.

### **Numbers of staff and costs involved**

14. For the whole of the 2013-15 dispute there were 66,428 individual periods of strike action taken by 5,305 staff which break down today as follows:
  - (a) 43,725 periods undertaken by 3,321 current staff who are still pension scheme members
  - (b) 3,582 periods undertaken by 329 current staff who were not pension scheme members at the time of the dispute (and so there is no pensionable service to buy back)
  - (c) 3,682 periods undertaken by 287 former staff who bought back these periods of pensionable service
  - (d) 15,439 periods undertaken by 1,368 former staff who elected not to buy back these periods of pensionable service
15. The costs involved for group (c) employees in paragraph 14 were: Cost of employee pension contributions: £40k; Cost of employer pension contributions: £57k; Total cost: £97k.
16. The total costs for group (a) employees in paragraph 14, if they all elect to buy back all of their pensionable service will be as follows: Cost of employee pension contributions: £ 419k; Cost of employer pension contributions: £571k; Total cost: £990k. Hence if the LFC exercises discretion to pay the employer's contribution for these periods, the potential cost would be up to £571k.

### **Next steps**

17. When the recommendations have been agreed by the London Fire Commissioner, all relevant staff will be written to setting out the dates where pensionable service were lost, along with the costs of buying back this pensionable service by date. Affected staff are entitled to buy back some, but not all, relevant periods of pensionable service; most will have lost up to 15 individual days pensionable service. This will be a major administrative exercise. Staff will be given 6 months to advise if they wish to buy back this pensionable service, and where this is requested, staff will be advised that the relevant sums of money will deducted from salary in 6 equal monthly instalments commencing with the next available payroll.

### **Finance comments**

18. This report recommends that all serving operational staff who lost pensionable service on account of taking strike action during the national FBU pensions dispute between 2013-15 are given a 6-month deadline for them to confirm whether or not they wish to buy back the

pensionable service lost. The report also recommends that the LFB does not exercise discretion to pay the employer's pension contribution where employees elect to buy back pensionable service under recommendation.

19. The report notes that if the employer does exercise its discretion to pay the employer's contribution, this would result in an additional cost of up to £571k and would increase the forecast overspend. The report also notes that this will be a major administrative exercise for the LFB. This additional work will be contained within staff resources.

### **Workforce comments**

Consultation with the London Region Fire Brigades Union has taken place on the recommendation within this report, in particular that the London Fire Commissioner does not exercise discretion to pay the employer's contribution where employees elect to buy back pensionable service. The FBU did not object to the recommendation that the LFC does not exercise discretion in this way; their sole comment was to request time frames where their members would be contacted to buy back their pension contributions.

### **Legal comments**

20. Under section 9 of the Policing and Crime Act 2017, the London Fire Commissioner (the "Commissioner") is established as a corporation sole with the Mayor appointing the occupant of that office. Under section 327D of the GLA Act 1999, as amended by the Policing and Crime Act 2017, the Mayor may issue to the Commissioner specific or general directions as to the manner in which the holder of that office is to exercise his or her functions.
21. By direction dated 1 April 2018, the Mayor set out those matters, for which the Commissioner would require the prior approval of either the Mayor or the Deputy Mayor for Fire and Resilience (the "Deputy Mayor").
22. Paragraph (b) of Part 2 of the said direction requires the Commissioner to seek the prior approval of the Deputy Mayor before "[a] commitment to expenditure (capital or revenue) of £150,000 or above as identified in accordance with normal accounting practices...". In the event that the recommendations in this report are accepted, the approval of the Deputy Mayor is not required before the LFC can take a Decision in this regard. However, should the LFC wish to pay the employer contributions for the pension buy-back for the relevant period, in the sum of up to £571k, then prior approval of the Deputy Mayor will need to be sought.
23. Paragraphs 7 and 8 of this report set out the relevant provisions of the Firefighters' Pension Schemes 1992 and 2006, under which employees can buy-back pensionable service.
24. In accordance with Part 4 of the LFC's Scheme of Governance (1 May 2020) ("Scheme"), the Assistant Director, People Services has delegated authority to exercise discretions under the Firefighters Pension Schemes. However, the LFC may reserve to himself any matters that he wishes to decide; or officers, with the agreement of the Commissioner, may refer other matters to the Commissioner.

### **Sustainability implications**

25. There are no direct sustainability implications arising from the recommendations within this report.

## Equalities implications

26. The London Fire Commissioner and decision-takers are required to have due regard to the Public Sector Equality Duty (s149 of the Equality Act 2010) when exercising our functions and taking decisions.
27. It is important to note that consideration of the Public Sector Equality Duty is not a one-off task. The duty must be fulfilled before taking a decision, at the time of taking a decision, and after the decision has been taken.
28. The protected characteristics are: Age, Disability, Gender reassignment, Pregnancy and maternity, Marriage and civil partnership (but only in respect of the requirements to have due regard to the need to eliminate discrimination), Race (ethnic or national origins, colour or nationality), Religion or belief (including lack of belief), Sex, and Sexual orientation.
29. The Public Sector Equality Duty requires us, in the exercise of all our functions (i.e. everything we do), to have due regard to the need to:
  - (a) Eliminate discrimination, harassment and victimisation and other prohibited conduct.
  - (b) Advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it.
  - (c) Foster good relations between people who share a relevant protected characteristic and persons who do not share it.
30. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
  - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic where those disadvantages are connected to that characteristic;
  - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
31. The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
32. Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
  - (a) tackle prejudice, and
  - (b) promote understanding.
33. A Standard Equality Impact Assessment (EIA) has been undertaken. This noted that the impacted group of staff (those who took industrial action between 2013-15) have at least 5 years service and are therefore likely to be older than the current workforce as a whole, but otherwise with a broadly similar profile in terms of protected characteristics compared to the workforce. The recommendations will benefit this group of staff, but as noted, the recommendations represent a statutory entitlement. The impact on groups who buy back pensionable service will be monitored across all protected characteristics, and reported to the Local Pension Board as part of its working group on Inclusion and Togetherness. In terms of gender, as the operational workforce is predominantly male, they are most likely to be positively



affected by the recommendation to now put in place a framework for them to buy back their lost pensionable service.

34. The EIA also noted that the recommendation not to apply discretion to pay the employer pension contribution where buy-back is requested may come as a disappointment to this group of staff, however this is the default statutory provision, and if discretion were to be applied, this would represent a very large financial commitment (potentially up to £571k) at a time when LFB are being asked to conduct a major savings exercise by City Hall.

### List of Appendices

Appendix	Title	Protective Marking
	None	

### Consultation

Name/role	Method consulted
London Region Fire Brigades Union	By email, on the recommendations within this report
Interim Assistant Director People Services	Circulation of draft report
Head of Sustainable Development	Circulation of draft report
Equality Manager	Circulation of draft report
Employment Law and Litigation Unit Manager	Circulation of draft report
Head of Strategic Finance	Circulation of draft report