

CHESHIRE FIRE AUTHORITY

MEETING OF: STAFFING COMMITTEE
DATE: 17 SEPTEMBER 2018
REPORT OF: DIRECTOR OF GOVERNANCE AND COMMISSIONING
AUTHOR: JAYNE NIXON

SUBJECT: ALLOWANCES AND PENSIONABLE PAY -
NORMAN CASE FOLLOW UP WORK

Purpose of Report

1. This report summarises the work that has taken place to resolve the position of a number of staff, former staff and pensioners following the High Court decision in the Norman v Cheshire Fire and Rescue case from 2011. The Norman case was concerned with whether allowances were part of pensionable pay under the Firefighters Pension Scheme 1992.

Recommended: That

- [1] Members note the outcome of the work to implement the decision in the Norman case and the financial impact that this has had.

Background

2. Fire and Rescue Services operate a range of duty systems some of which involve the payment of allowances in addition to basic pay. The treatment of allowances impacts upon the pension position of operational staff.
3. Mr Norman was a firefighter and worked for Cheshire Fire and Rescue Service (CFRS) on the Day Crewed Duty System. He received an allowance of 26.85% of his pay (made up of various elements). Following advice from the Department for Communities and Local Government, the Day Crewed Duty System Allowance was not treated as pensionable pay by CFRS.
4. Two other allowances paid to staff (Nucleus Duty System, 7.5%, and Day Duty System for Training Officers, 10%) were also not treated as pensionable pay. The Flexible Duty System (20%), payable to Station Managers and above, had always been treated as pensionable, because that was a requirement of the Grey Book terms and conditions.
5. Mr Norman, with the support of the Fire Brigades Union, issued proceedings challenging the fact that the Day Crewed Duty System allowance had not been treated as pensionable pay. The case was considered by the High Court in

2011 and it decided that the majority (most elements) of the allowance should be treated as pensionable pay.

Information

6. The decision in the Norman case had far-reaching implications for all fire and rescue services. Essentially, it meant that it would no longer be possible to exclude allowances from pensionable pay (notwithstanding the terms of collective agreements that had been previously negotiated and agreed).
7. Officers from human resources, finance and legal considered the Nucleus Duty System and Day Duty System for training officers allowances that were, up until the decision in the Norman case, not treated as pensionable pay. Following advice from the barrister that had represented the Authority in the High Court it was conceded that the other two allowances would need to be treated as pensionable pay.
8. The decision in the Norman case had present and future implications, but also needed to be applied retrospectively, affecting former staff and pensioners as well as current staff. Officers produced a comprehensive list of former staff, pensioners and staff affected and considered the various scenarios that needed to be worked through. In total 169 individuals were affected.
9. The firefighters' pension schemes require the payment of contributions by employer and employee. As a result, it was necessary to agree how the contributions would be 'made up'. It was believed that only then could former staff, pensioners and staff anticipate/realise the additional pension benefits that flowed from the decision in the Norman case.
10. For the Day Crewed and Nucleus allowances the calculation of backdated contributions was straightforward, since the allowances had been agreed in recent years. The Trainers allowance had been paid since 2002, although necessary payroll records were only available from 2006 and this date was used for the calculations.
11. Following representations from the Fire Brigades Union's solicitors and in light of the provisions in the Limitation Act 1980 (which impact on the ability to pursue matters through the courts) it was agreed that the backdated allowances related to the Training Officers Duty System due from former staff, pensioners and staff should only be taken back six years from the date of the decision to treat the allowance as pensionable. This was an approach adopted by other fire and rescue services.

Financial Implications

12. The decision in the Norman case has had a number of financial implications.

13. The Authority now pays a pension contribution in respect of the new DC1, Nucleus, Trainers and Flexible duty allowances. This sum will fluctuate, but for the last financial year, it amounted to £47,500 for these three duty systems.
14. The Authority paid the backdated pension contributions (for both employer and employees) for the Day Crewed, Nucleus and Trainers allowances. This payment covered the whole period that the allowances had been paid, going beyond the six year period mentioned in paragraph 11.
15. The Authority has secured payments (some by instalments) from most individuals affected. However, this has proved difficult for a limited number of former staff and pensioners.
16. The 'compromise' agreed with the Fire Brigades Union mentioned in paragraph 11 above (Limitation Act 1980) means that the Authority will not be paid £11,189.35 employee contributions. This decision was considered to be within the remit of the then Head of Legal and Democratic Services as it was related to the decision in the Norman Case. This sum was deemed irrecoverable.
17. There are five former staff/pensioners who owe between £34.19 and £1882.26 totalling £2971.80. It is believed that it is not appropriate to pursue these as debts and that they should be written off. Some will be uneconomic to pursue in any event. Officers intend to write them off in due course.

Legal Implications

18. The report deals with the legal implications flowing from the decision in the Norman case.

Equality and Diversity Implications

19. There are no equality and diversity implications relating to this report.

Environmental Implications

20. There are no Environmental implications relating to this report.

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BACKGROUND PAPERS: NORMAN V CHESHIRE FIRE AND RESCUE DECISION