

Essex Fire Authority

Report to the Constituent Authorities of the meeting on 4 December 2013

1. ESSEX FIRE AUTHORITY – DCLG AND FBU PENSIONS UPDATE.

In May 2013 the FBU raised a trade dispute with Ministers and with all the employing Fire and Rescue Authorities around proposed changes to Pensions in the Fire and Rescue Service.

This includes changes to employee contribution rates and the ratio of employee to employer contributions, changes to commutation rates (the process of converting an amount of pension into a lump sum) and an increase in the Normal Pension Age (NPA) from 55 to 60 years of age.

Mr Matt Wrack, General Secretary of the FBU, wrote to the Ministers and employing authorities on 16th May setting out seven provisions which the FBU are asking for and which, if not met, would result in a ballot for industrial action

Initial negotiations proved unsuccessful and a FBU ballot supported strike action (with the exception of Scotland who took the decision not to strike). Whilst negotiations continued, no agreement was reached, culminating in strike action on 25th September 2013. A further date for strike action was set for 19th October 2013 but was called off at short notice after the National Employers put forward some draft principles relating to fitness and capability.

This discussion focussed on one element of the dispute; that of the increase to the retirement age to 60, and what would happen to a firefighter who on reaching the age of 55 was not able to meet required fitness standards but was not eligible for early retirement on ill health grounds. The FBU assert that such employees face the prospect of being dismissed and having 'no job, no pension'.

The National Employers called a consultation meeting with Local Employers on 24th October 2013 to discuss the 11 draft principles and seek Fire Authorities' agreement to move forward to agree those principles to support the resolution of the dispute (Appendix 1).

The Authority was represented at that meeting by the Chairman of Essex Fire Authority and the Director of HR & OD.

At that meeting concerns were raised by Fire Authorities including Essex Fire Authority, that the principles, as worded, could result in the Authority being obliged to commence an Authority initiated early retirement process for firefighters not able to meet the fitness standards. In short this would mean that a firefighter of the age of 55 or over who could not maintain their fitness but was not eligible for ill-health early retirement would be retired early by the Fire Authority and receive a full (non-actuarially reduced) pension.

In such circumstances the Authority would be required to pick up the costs of the actuarial reduction which could be tens to hundreds of thousands of pounds for each eligible employee, dependent on individual circumstances.

For clarity, it should be noted that an individual in this circumstance, who was potentially facing capability dismissal could already retire and take an actuarially reduced pension, therefore the

FBU suggestion that an employee would face 'no job, no pension' is not accurate and would only arise if the employee chose it.

The Fire Authorities were clear that any proposal that this actuarial reduction can be made up to a full pension could only be supported if Government undertake to fully fund the cost, and that the mechanism for Government funding any actuarial reduction be underpinned within a statutory framework or other appropriate mechanism (as is proposed in Scotland).

In addition the Fire Authorities expressed some concerns with the suggestion that redeployment of firefighters who fail to maintain their fitness should be 'within role' as this essentially limits the redeployment opportunities available. The suggested creation of 'new' roles to accommodate these employees is likely to limit flexibility within the workforce and increase costs, at a time when most Fire Authorities are seeking to widen rather than narrow roles and multi-skill staff to deliver greater flexibility. All of which is delivered against a backdrop of decreasing funding and a need to manage human resources more efficiently.

Other concerns were raised in relation to the terminology of the 11 principles and the potential consequences of agreeing them but these were secondary to the two concerns listed above.

It was agreed that the National Employers would go back to the FBU with a proposal to seek to amend the 11 principles and whilst these talks have continued, the FBU announced further Strike action for 1st and 4th November 2013.

In the absence of an agreement, Fire Minister Brandon Lewis, wrote to Fire and Rescue Authorities on 1st November to announce that he was to consult on the same set of draft principles with the intention that they become national guidance, to be adopted and elaborated upon by individual fire and rescue authorities. He confirmed in this letter his intention to commission an independent review of the adopted principles three years after they have been issued to assess whether they are fit for purpose and being properly implemented and to reference agreed principles in the Fire and Rescue Service National Framework.

The Chief Fire and Rescue Adviser (CFRA) will administer the consultation which closed on the 6th December 2013.

Members were reminded that fitness and capability is only one area of the current pensions dispute. There appears to have been little or no movement on the other demands made by the FBU and therefore even if the fitness and capability issue was resolved, the dispute in its entirety would still not be resolved unless an agreement can be reached between the Government and the FBU on these other demands.

INDUSTRIAL ACTION – PARTIAL PERFORMANCE

Since the announcement of the DCLG consultation exercise and despite on-going talks between the FBU and National Employers, the FBU have announced further strike action on 13th November 2013 and initiated a further ballot of their members for industrial action short of strike action. This ballot closed on 4th December 2013 has been extended to FBU members within the Control room and can only be seen as an escalation of industrial action with the potential aim of disrupting what have proven effective resilience arrangements in many Fire and Rescue Services. FBU Members voted in favour of industrial action short of strike action and this will take place between 6pm and 10pm on 12th and 13th December.

Action short of strike action can take many forms, in the 2012 local dispute in Essex this included a ban on overtime and 'acting up' and moved on to periods within which the FBU instructed their members to respond to 999 Emergency calls only and not to undertake other duties.

Strike action is technically a breach of contract and therefore the Authority can withhold pay from the employee for the period of strike action.

In addition the Authority is entitled to demand full performance of an employee's contract of employment and is not obliged to accept partial performance of that contract. This includes action short of a strike or the failure to attend a full shift as per contract. For example, the FBU may decide to take an approach to strike action to cause maximum disruption to the Service with minimal cost implications for the individual taking action. This could be achieved by calling strike action for one hour at the beginning and end of a shift.

In this example the Authority can choose to accept partial performance and make a deduction from pay for only the element of the shift for which the employee withdrew their labour (e.g. two hours). Alternatively the Authority could refuse to accept partial performance and deduct pay for the entirety of the shift. The Authority can in this scenario also choose to 'lock out' the employees from the workplace for the rest of the shift.

Likewise should employees take action short of strike action and refuse to undertake some of their duties, then this is not full performance of contract and as such the Fire Authority could choose to withhold pay proportionate to that element of the contract which was not performed.

In any circumstance where the Authority decides not to accept partial performance it is essential to give notice to employees that it will not accept partial performance and state clearly what the consequences will be.

The Fire Authority recognises the right of employees to take part in lawful industrial action and in this instance it is relevant that the dispute is between the FBU and the Government, not the local employers. Because of this, the decision was made to accept partial performance for the short periods of strike action undertaken to date.

However, Service managers also have an obligation at a local level to mitigate the impact of any industrial action. This does not only mean that we must put in place robust professional fire cover resilience arrangements but we must also ensure that the cost of those arrangements, where possible, does not fall on the public purse and that the Fire Brigades Union cover the cost of industrial action they have called, rather than the tax payers of Essex.

Whilst Service managers have no desire to place an unfair financial burden on staff who choose to take industrial action we do feel it appropriate to consider whether to accept the full cost burden of that action as each occurrence arises. This decision needs to reflect the net cost of the planned action to the Authority.

Employee relations matters are delegated to the Chief Fire Officer, however, in light of the increasing potential for what is a national dispute to take a more local emphasis, this report asks for the Fire Authority to confirm the delegation to the Strategic Management Board to make decisions on partial performance, on a case by case basis, as deemed appropriate for the duration of this dispute. Because periods of strike action can be called with just 7 days' notice it is impractical for the Authority to take these decisions for each and every period of strike action.

Members of Essex Fire Authority agreed the consultation response and approved its issue to DCLG, and confirmed the delegation of authority to make decisions on partial performance to the Strategic Management Board.

2. OPERATIONAL INCIDENTS AND INCIDENTS OF NOTABLE INTEREST.

For the period 1 April to 30 September 2013 Essex County Fire and Rescue Service has attended 7,523 incidents compared with 7,655 for the same period last year. Despite primary fires continuing to reduce from 1222 to 1191, the total number of incidents of fire has increased from 2,491 to 2,608. This is due to a slight increase in secondary fires with 1391 attended compared to 1234 for the same period last year.

Special Service incidents have reduced from 1912 to 1800. The majority of special service incidents continue to be road traffic collisions (RTCs).

False alarms continue to reduce with the number of false alarms due to apparatus attended declining from 1377 from the previous year to 1250 from April to September 2013 and hoax calls attended by the Service has also continued its downward trend from 133 to 96.

Summary of Incidents Attended by ECFRS – 2012/13 compared to 2013/14

Incident Type	2012/13	2013/14
Fires	2491	2608
Special Services	1912	1800
False Alarms	3252	3115
Total	7655	7523
<u>Fires</u>		
Primary Fires		
Dwelling	471	445
Other building	218	254
Vehicle	385	375
Other	148	117
Secondary Fires	1234	1391
Chimney Fires	35	26
Total	2491	2608
<u>Special Services</u>		
RTC	604	606
Effecting Entry	197	225
Lift Release	179	218
Flooding	237	179
Removal of objects from people	95	78
Animal assistance incidents	70	74
Spills and Leaks (not RTC)	87	69
Other rescue/release of persons	88	58
Assist other agencies	75	53
Making Safe (not RTC)	54	45
No action (not false alarm)	31	42
Removal of people from objects	33	30
Hazardous Materials incident	32	25
Other Transport incident	21	22
Stand By	13	20
Suicide	15	14
Medical Incident - First responder	26	13
Advice Only	8	11
Rescue or evacuation from water	30	8

Evacuation (no fire)	10	6
Medical Incident - Co-responder	6	4
Water provision	1	0
Total	1912	1800
<u>False Alarms</u>		
False alarm due to apparatus	1377	1250
False alarm good intent	1742	1769
Malicious false alarm	133	96
Total	3252	3115

The table set out below highlights the number and incident types at which the Service has encountered fatalities, injuries or has affected rescues for the period 1 April to 30 September 2013.

February 2012 – January 2013				
Incident Type	Fatalities	Injuries	Rescues	Persons Involved (Total)
False Alarm	0	0	0	0
Fire	4	114	14	132
*Special Service	18	523	434	975

3. KELVEDON PARK PROGRESS REPORT

Having initiated construction of Phase 2A in October 2012 with a proposed completion date of January 2014, the contractual completion date was changed by negotiation in December 2012 to the end of March 2014.

The building is to be prepared in two sections, the first being the completion of the construction of the extension and the second involves internal changes to the existing building that can be facilitated by the space created. The second section includes the centralisation of some departments within the building to be located together and the extension of the canteen seating area to accommodate more staff from Hutton and other sites and visitors on site.

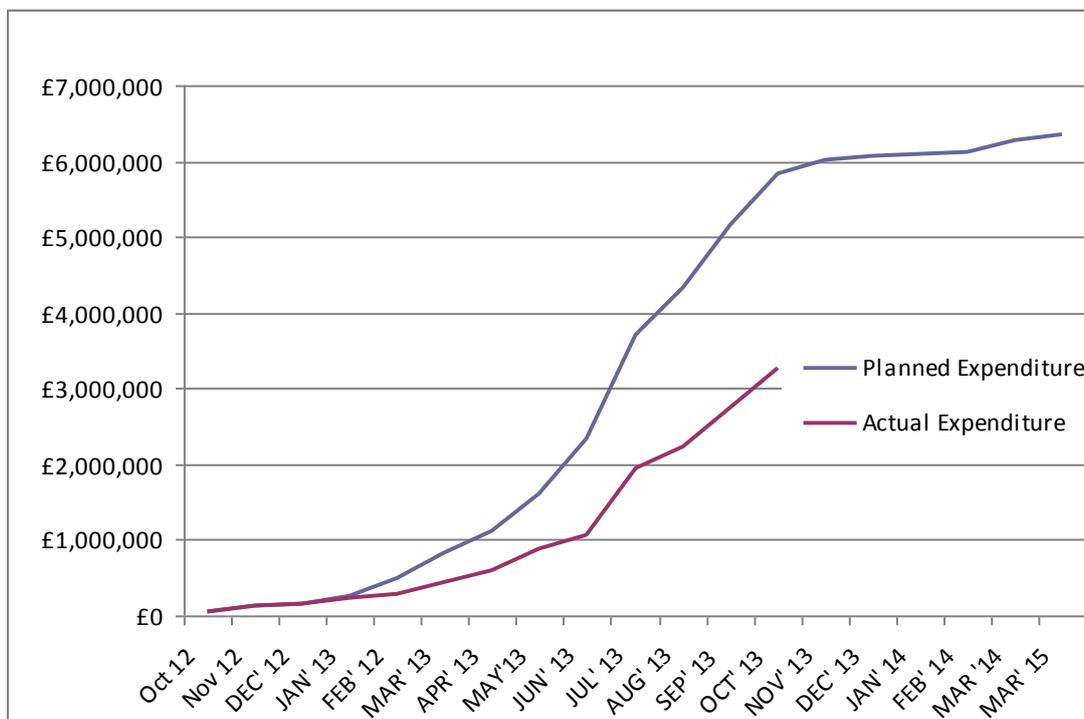
There have been a number of challenges presented by the build for the Property Services team. Initially some issues with the start date led to a delay which had several knock on effects to the construction. Timescales and quality of the construction suffered through the beginning of the year and the summer although a concerted effort from the contractor and the design team on behalf of the Authority has led to substantial improvements in construction processes and finishes.

Part of these improvements has also involved the examination of the proposed timetable. The contractor Farrans were aiming to complete the first section of development for handover by the 31st January, 2014. However, at this time the contractor is around £2.4m behind their original cash flow forecast which makes the current forecast completion date unlikely.

Issues are starting to arise with the services to the site. Although power is readily attainable through adjacent land, water supply is being hampered by negotiations. Every effort is being made to bring these services to site as soon as possible to reduce the impact on the

construction although the possible timetable is still vague. Confirmation of completion dates will be available once the situation regarding services is clearer.

The main construction can continue through to and possibly after Christmas unaffected by the services issues. Currently works continue at a reasonable pace and are being closely monitored for quality and performance. A majority of the original design issues have been understood and cleared with good progress being made. The current cash flow analysis highlights construction progress.



PROGRESS TO THE END OF JANUARY 2014

Over the next few weeks there will be completion of the external elements of the building such as the windows and roofing. Internally, works will continue with the completion of electrical and mechanical elements. If statutory services can be completed then work will progress to cover these and complete carpeting and decorations. External civil works such as car parking and landscaping will start in the next few weeks and continue through to the end of the project.

**Councillor Anthony Hedley
Chairman**