

## **Hampshire Fire and Rescue Authority**

### **Standards and Governance Committee**

**23 March 2017**

### **Pensionable Allowances (Additional Duty / Training)**

#### **Report of the Chief Financial Officer**

Contact: Melanie Swain, Strategic HR Adviser HR Tel: 023 80 383337

## **1 Summary**

- 1.1 As a result of an earlier legal case - Norman V Cheshire Fire and Rescue Services 2011, all Fire and Rescue Authorities (FRA) have been reviewing their local allowances to confirm whether or not their current pensionable or non-pensionable status should change.
- 1.2 In 2016, the Local Government Association (LGA) advised that there is not a 'one-size-fits-all' solution for all FRAs across the country and each service should reach its own conclusion looking at contracts of employment, local policies and custom and practice.
- 1.3 HFRA has previously reviewed all of its allowances except 'Additional Responsibility Allowances' and the '10% Training Allowance'. This Paper deals with these last remaining allowances.

## **2 Recommendations**

### **2.1 10% Training Allowance - Substantive trainers**

Becomes pensionable from 1<sup>st</sup> April 2017.

As an exception, current substantive trainers may apply to have the Training Allowance backdated and treated as a pensionable emolument to 1<sup>st</sup> April 2016.

### **10% Training Allowance - Temporary promotion trainers**

*2015 pension scheme* – Non-pensionable under pension scheme rules

*2006 and 1992 pension scheme* – Becomes pensionable from 1<sup>st</sup> April 2017 but is included as part of the Additional Pensions Benefit (APB) calculation (to be consistent with the approach taken with RDS payments last year).

- 2.2 All current **Additional Duty Responsibility Allowances** continue to be paid as non-pensionable. Any new ARAs developed to be assessed for pensionable status against the Blackburne Principles.

## **3 Introduction and background**

- 3.1 The legal case 'Norman v Cheshire Fire and Rescue Service' surrounded the issue of pensionable pay and the interpretation of Rule G1 of the 1992 Firefighters' Pension Scheme. The case was heard in October 2011 and the Judgment made public December 2011.
- 3.2 The case was raised by Mr Norman, a firefighter with Cheshire FRA. Mr Norman retired in 2008 and said that his pension should have been higher and that his day-crewing allowance and RDS payment should have been pensionable.
- 3.3 However, in October 2007, the terms and conditions of pay for retained officers in Cheshire FRA changed and Mr Norman believed that he lost out in pension pay as a result. Cheshire FRA chose not to appeal against the decision.
- 3.4 The outcome of the case was that, under Rule G1, the consolidated pay received by Firefighters working the Day Crewing system in Cheshire fell within the meaning of pensionable pay. Additionally, that flexible duty pay payable to Officers working the Flexible Duty System and London Weighting is pensionable.
- 3.5 The judge referred to an earlier case and stated that the Blackburne Rules should be considered when determining which allowances should be pensionable.
- 3.6 As a result of this case, FRAs across the country have subsequently been reviewing their own allowances paid to Firefighters to determine whether they should be pensionable or not, using the Blackburne Principles.
- 3.7 A number of Fire Authorities chose not to look at the matter until central advice was provided by the Local Government Association. In 2016, a workshop was held for Authorities but the conclusion was that it was for individual fire authorities to determine their own rules recognising local precedent and application.

#### **4 The Blackburne Principles\***

- 4.1 A payment should be deemed pensionable if it is:
  - A. a regular payment (not one-off or episodic in nature)
  - B. a payment entitled to under the contract of employment
  - C. payable at a rate applicable to the role (is an additional amount calculated as a percentage increase in the individual's salary)
  - D. Is paid in the ordinary course of fulfilling their duties (so not an exceptional payment related to a special event or circumstance)
  - E. Has something of a permanent nature (not only payable if called upon)

*See end of report for assessment of allowances against Blackburne Principles*

\* From Mr Justice Blackburne in the case of Kent & Medway Towns –v- Pensions Ombudsman & another [2001] OPLR 357

#### **5 Current status of the HFRA's 10% Training Allowance and ARA's**

- 5.1 **10% Training Allowance**  
The allowance is calculated as 10% of the recipient's basic salary and is

contractual (referenced in the Statement of Particulars). The training duties carried out are intrinsic to the job role and are non-discretionary. The Allowance is paid to trained firefighters who carry out the role of Instructor as part of their role.

There is no reference in the Grey Book<sup>1</sup> to the treatment of a 10% Training Allowance.

<sup>1</sup> *The Grey Book is a national set of T&Cs for those eligible to join the Firefighters' Pension Scheme. The Grey Book has not been updated for a number of years and can no longer be relied upon to provide accurate guidance.*

### **Additional Responsibility Allowances (ARAs)**

- 5.2 There is no reference to ARAs within the Statement of Particulars.
  - 5.2.1 There is no automatic entitlement to an ARA.
  - 5.2.2 ARA duties are voluntary and outside the substantive role-map. Unlike the Training Allowance, they are non-compulsory, not part of the written statement of particulars and are not linked to the recipient's basic pay. The payment for a particular 'Additional Responsibility' is fixed over the year, divided into 12 and paid monthly.
  - 5.2.3 Additional responsibility duties enable individuals to train in new skills and therefore provides job enrichment to those who volunteer to undertake them.
  - 5.2.4 The service requires a certain number of additional responsibilities to be carried out in any one year, dependent on service need and determined by the Training Department. Invariably more staff volunteer and are trained in additional responsibilities than positions exist during any given year.
  - 5.2.5 It is custom and practice for the staff to take on a responsibility for a fixed period (usually 12 months) before handing over the responsibility to a colleague for the following year. Hazemat and DIM responsibilities may be held for longer as they are undertaken by Station Managers and therefore there is a smaller pool of volunteers to undertake the role, however, the same assessment applies as the other ARAs in all other respects. Staff can choose to stop an additional responsibility at any time during the year, if they no longer want to undertake it, and the responsibility simply transfers to a suitably qualified colleague. This process enables all eligible and interested personnel to gain valuable experience.
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5.2.6 **Amounts payable, subject to authorisation from the Training Team, are as follows:**

<b>Additional Responsibilities</b>	<b>Monthly</b>	<b>Annual</b>
FF Instructor	£22.09	£265.00
2 x FF Instructor qualifications	£33.13	£397.56
National Vocational Qualification (NVQ) A1 Assessors	£17.92	£215.00
National Vocational Qualification (NVQ) V1 Assessors	£22.09	£265.00
Hazardous materials	£22.09	£265.00
Hazardous materials & Detection / Identification and Monitoring (DIM) vehicles	£26.25	£315.00
Fire Investigation	£42.92	£515.00
Co-Responders	£26.25	£315.00
Marine Instant Response Group	£22.09	£265.00
Officer in Charge – Retained Duty System (RDS) Stations	£26.25	£315.00

5.2.7 The Grey Book states that “*An employee may be paid an allowance or allowances to reward additional skills and responsibilities that are applied and maintained outside the requirements of the role but within the job function. Payments will be based on the requirements of the fire and rescue authority’s Integrated Risk Management Plan and may include payment for skills’ shortages where these are directly applicable to the delivery of the Integrated Risk Management Plan.*”

5.2.8 It goes on to state that “*The maximum payable to any individual employee will be determined locally. Additional responsibility payments are temporary and non-pensionable and may be withdrawn following reasonable notice from the fire and rescue authority*”.

## 6.0 **Discussion and Recommendation**

6.1 Fire and Rescue Services who have already gone through the process of reviewing all their allowances have implemented changes from different dates and based decisions based on local circumstances and precedent.

### 6.1.1 **Substantive trainers**

That the 10% Training Allowance, paid as a percentage of basic pay, changes from non-pensionable to pensionable for substantive trainers with effect from 1<sup>st</sup> April 2017. Exceptionally, current substantive trainers may apply to have the Training Allowance backdated and treated as a pensionable emolument to 1<sup>st</sup> April 2016 (1 full calendar year). To exercise this option the employee will be required to make a ‘one-off’ payment of the additional pension contributions relating to the 10% training allowance paid over the 12 month period (1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2017). No part year backdating is permissible.

### 6.1.2 **Temporary Trainers (resulting from temporary promotion)**

*2015 pension scheme* – Under the rules of the national scheme, allowances cannot be pensionable, when linked to temporary promotion

*2006 and 1992 pension scheme* – The Training Allowance will be treated as pensionable but included as part of the Additional Pensions Benefit (APB) calculation. This arrangement provides a consistent approach to the treatment of

the RDS payments taken last year).

### 6.1.3 ARAs

It is recommended that the existing rules continue for ARAs whereby they remain non-pensionable. Any proposal to have made them pensionable could require the process, including selection and appointment, to be reviewed which could be disproportionate to the size of the allowances.

Any new ARAs developed in the future to be assessed for pensionable status against the Blackburne Principles.

## 7.0 Financial implications of any changes

7.1 The total estimated cost of the employers pension contribution are as follows:

	<b>Estimated employer pension contribution costs</b>
<b>2017/18</b> (onwards)	6 substantive Trainers and 3 temporary promotion Trainers active in either the 2006 or 1992 Pension Scheme
<b>10% Training Allowance</b>	£6406 (2017/18)
<b>One-off backdating of TA to 01.04.16</b> (6 substantive trainers)	£4,512
<b>ARAs</b>	Approx. £23,000 (although recommended that ARAs remain non-pensionable)

### People Impact Assessment

The proposals, if agreed, will mean that all those in receipt of the 10% Training Allowance and who are a member of the Firefighter's Pension Scheme, will be required to pay pension contributions on their allowances from **1<sup>st</sup> April 2017**.

### Consultation

Heads of Service, Directors and unions have been consulted over the contents of this Paper.

### Background Papers

None

**Assessment of current allowances using the Blackburne Principles**

	<b>Regular payment (not one-off or episodic)</b>	<b>A payment entitled to under the contract of employment</b>	<b>Payable as a % of base pay)</b>	<b>Paid as part of role map (not exceptional / related to a special event)</b>	<b>Has a perm. nature (not only paid if called upon)</b>
<b>10% Training Allowance</b>	Yes	Yes	Yes	Yes	Yes
<b>2 x FF Instructor quals</b>	Payment inc.in mthly pay for up-to a yr. Individual may opt-out at any time.	Not written into contract but may be viewed as contractual as role usually held for a year	No	No - Voluntary - outside of individual`s role map	No – usually payable for a max. of one year. Individual may opt-out of role at any time.
<b>NVQ A1 Assessors</b>	As above	As above	No	As above	As above
<b>NVQ V1 Assessors</b>	As above	As above	No	As above	As above
<b>Hazmat</b>	Payment inc.in mthly pay.Indiv. may opt-out at any time.	Not written into contract but may be viewed as contractual as role usually held for a year or more	No	As above	Paid to Station Mgrs. (who volunteer and can opt-out at any time)
<b>Hazmat &amp; DIM</b>	Payment inc.in mthly pay. ndiv. may opt-out at any time.	Not written into contract but may be viewed as contractual as role usually held for a year or more	No	As above	Paid to Station Mgrs. (who volunteer and can opt-out at any time)
<b>Fire Investig.</b>	As above	As above	No	As above	As above
<b>Co-Responders</b>	As above	As above	No	As above	As above
<b>MIRG</b>	As above	As above	No	As above	As above
<b>Officer in Charge - RDS Stns.</b>	As above	As above	No	As above	As above