

Briefing note – High Court ruling on Pensionable Pay Booth & Jones v Mid and West Wales FRA

From – Paul Gwynn, Payroll and Pensions Manager

To – Local Pension Board

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1. On 29th March 2019 the High Court issued its judgement in two cases regarding the definition of Pensionable pay in the Firefighters Pension scheme.
2. The case received a reasonable amount of publicity via the FBU website and “Pensions Age “ a leading industry publication. Both sets of publicity claimed that the judgement has the impact of making overtime pensionable in the cases concerned. On closer examination of the judgement, it appears that this claim is not correct.
3. The judgement helpfully separates the three issues and we can now examine them more closely.

- A) In the first case a member of the 1992 scheme was receiving a 12% pay enhancement for undertaking the role of Direct Trainer. The original decision by the Pensions Ombudsman was that the allowance should have been treated as pensionable pay from the first time the Firefighter began to receive it. The Fire Authority appealed this decision and argued that as the member was only undertaking the role on a Temporary Basis this could not be the case. The High Court ruled in favour of the Authority on the basis that prior to them issuing the member with a change to his contract confirming that he was permanently holding the role of Direct Trainer the allowance should not have been pensionable.

This case is the simplest of the four issues.

Within West Midlands Fire Service we have few allowances which relate to the deployment of additional skills. Where these allowances are in payment and the member is permanently employed in the role which attracts the allowance, it is treated as pensionable pay. If a member is temporarily promoted to a post attracting the allowance it is treated as an Additional Pension Benefit under the rules of the 1992 and 2006 scheme or is non-pensionable in line with the 2015 regulations. Our reading of the judgement is that it does not affect the approach we take.

- B) The second judgement linked the cases of two Firefighters receiving allowances for working on Day or Self Rostered shift systems. In this case the Judge rules that the additional allowances paid were to be classed as Pensionable pay. We currently operate three duty systems. The standard Grey book 2 2 4 core shift. This has no additional allowances. The late shift, which has a higher salary than the core shift, but again has no additional allowances. Finally we have Technical Rescue, where staff work as the core shift but provide additional out of hours cover and receive a 10% pay uplift. The 10% payment is pensionable and the judgement under consideration reinforces our view. If we were to bring in any new duty systems I would expect to be involved in the consultation process and would provide appropriate advice to ensure that problems are not encountered in the future.
- C) The final matter related to a 10% payment being made to a member for holding a secondary contract for USAR work. The allowance was contractually a payment under a second contract but paid alongside the members normal work. The judge held that the

payment for USAR duties was not pensionable. The recent Falls Response payments have provided us with a similar situation and we have dealt with them in line with the judgement given. Firefighters who were seconded to the Falls Response team received various allowances which we deemed as not pensionable on the basis that the work was clearly not part of a Firefighters role.

4. It is unclear what exactly made the FBU and Pensions Age make the claim regarding overtime, although the allowance paid to the Direct Trainer in the first case is paid in return for additional duties over and above the standard 42 hours. The view of Clair Alcock, Firefighter Pension Adviser, is that the judgement provides helpful clarity in respect of the definition of Temporary and Permanent allowances. The Scheme Advisory Board are reviewing the judgement themselves and will issue and update through a future Bulletin.
5. The Pension Board should consider whether it feels the judgement creates an additional risk for the Pension scheme and if so how this should best be mitigated, however, I feel that the whole time nature of the West Midlands Fire Service limits the potential exposure from the judgement at this time.