

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

DATE: September 2021

Retention of Retired Employees Matter of Urgency (Section 17.1 Authority Standing Orders) Decision

Report of the CHIEF FIRE OFFICER

It is RECOMMENDED:

- 1.1 That the Chief Fire Officer adopt a new Retention Policy for employees who express a desire to remain employed by WMFRA following retirement and satisfy the criteria set out in Appendix 1.
- 1.2 That the Chief Fire Officer makes this decision in consultation with the Chair, Vice Chair, Clerk and Monitoring Officer.
- 1.3 That the resolution is reported to the next ordinary meeting of the Fire Authority.

Purpose of the report:

This report is submitted to propose a new Retention Policy is introduced to provide an additional workforce planning tool and form part of the re-organisation, redeployment, redundancy policy. The policy will enhance the management of corporate risk by retaining key knowledge, skills and experience through the use of temporary or fixed term contracts where appropriate. In addition, it will enable and support WMFRA to improve its talent management succession planning processes. It may also support financial efficiencies in support of the Community Risk Management Plan (CRMP).

Background

The Government encourages and supports employers in offering opportunities for flexible working. In addition, the Government has

recognised that it is in the interests of both employers and pension schemes if employees can have early access to their retirement benefits but still be available to work. This approach has a twofold benefit, the first is to the employer in that they retain the skills and experience of an employee. The second is to the employee who can have access to their retirement benefits but also continue in employment.

The Retention Policy would apply to all staff in both the Local Government Pension Scheme (LGPS) and the Firefighters Pension Schemes (FPS). Due to pension scheme rules the policy for Local Government Pension Scheme and the policy for both Firefighters Pension Schemes are dealt with separately within the policy.

The Government's tax regime for pensions which came into effect on 6 April 2006 relaxed the rules to allow a firefighter to retire and receive some of their pension benefits, and then to be re-employed by the Authority.

Where this is the case, the annual pension may be reduced (often referred to as abated) by the amount by which the pension received and pay in the new post exceeds the pay received in the previous role. Abatement prevents a person who is re-engaged receiving pension and pay which exceeds their previous gross salary.

Members of the West Midlands LGPS scheme currently are not affected by abatement and the new FPS 2015 due to be implemented from April 2022 is expected to be aligned to this approach.

Retention remains at the discretion of the employer and to ensure a consistent and transparent approach is applied it is considered good practice that fire authorities formulate policies on this issue.

A Retention Policy has not previously been considered by the West Midlands Fire and Rescue Authority. However, should in exceptional circumstances where it is identified that specific knowledge skills and experience need to be retained this Retention Policy would provide a transparent approach to fulfil this requirement. A specific business case will be developed and approved in line with the Retention Policy. (draft Retention Policy is set out in Appendix 1).

A corporate risk has recently been registered relating to the recruitment and retention of key employees. The 2 paragraphs below provide examples of when the Retention Policy may have been used are shown below.

Over the last few years, staff with key skills in the Protection (Fire Safety) Team have retired, this has left gaps in capability, although Protection have an ongoing recruitment campaign it has become increasingly difficult to recruit. Following the Grenfell Tower tragedy in 2017, FRS Protection Teams have seen an increase in fire safety activity, Fire and Rescue Service are also starting to understand the burden of future legislative changes as a result. Over the next three years 10 posts will be lost due to retirement alone. These recruitment challenges are being experienced by all FRS's across the sector due to the challenges of succession planning and more specifically, time needed to train Fire Safety Inspection Officers to achieve competence, develop knowledge and experience.

Members of WMFS Organisational Learning and People Development Team have also retired creating an issue around delivery of risk critical training. This directly impacts on statutory health and safety responsibilities.

The proposed Retention policy will support the mitigation of this corporate risk.

It is worthy of note that the Authority's approach to Workforce planning profiling has highlighted a risk of significant staff loss due to retirement in one 'block' prior to 31st March 2022. This is due in part to the outcome of the recent Pension challenge (Fire and Judiciary) at an Employment Appeals Tribunal. Some of the impact from these cases come into effect from this date

The Retention Policy confirms that people appointed outside of the Managing Vacancies process ie they are re-appointed, will be appointed on a fixed term or temporary contract only following a break to clearly sever continuous service. This will assist to prevent any undue additional costs to the Service at a later date.

The new Retention policy will contribute as part of the mitigation plan to manage corporate risk and provide an opportunity to manage the impacts of ongoing budget reduction in support of the Community Risk Management Plan (CRMP).

Factors for Consideration

There are several factors to consider when determining to adopt a policy of re-employment of existing staff.

Potential benefits:

- Retention of experienced employees with considerable skills base to support ongoing delivery of the Plan, succession planning and manage Corporate Risk
- Potential financial efficiencies to offset budget reductions and in support of the CRMP
- Reduction in recruitment/training and development costs.
- Appropriate levels of skills and technical support retained within functions that in turn supports staff Wellbeing.
- Positive impact on staff morale by providing an alternative option for staff who do not want to retire at their earliest retirement age. This will further support improvements identified in the recent WMFRA HMICFRS inspection in respect of 'looking after our people'.

Re-appointment Policy Criteria

It is important to recognise that there is no automatic right to re-employment and any re-appointment will be based around the following factors:

- the appointment is required for the operational effectiveness of the Authority and in the interests of public safety
- the employee who has retired/is retiring has critical skills and knowledge which are not widely available and which the Authority needs to retain due to an impact on Corporate Risk
- the re-appointment offers may offer some efficiencies or is cost neutral in terms of budget setting and financial management.
- the person who has retired/is retiring is engaged on a project which is near to completion and where retention of their skills is required on a temporary basis until project completion

Any application for re-appointment will either be on a temporary or fixed term basis and must be supported by a detailed business case including the consideration that has been given to the following:

- the wishes of the individual

- the risk of not re-appointing the individual
- impact of the re-appointment the individual
- financial implications and efficiencies
- the individual's performance, sickness/discipline record and fitness for the role
- the skills and knowledge of the individual

Equality Impact Assessment

In preparing this report an initial Equality Impact Assessment is required and has been carried out. The initial Equality Impact Assessment did raise issues which required a full Equality Impact Assessment to be completed and is attached to this report.

Key points of note are that adopting a policy to provide staff with the opportunity to return to work following retirement, subject to the scope of the policy, could potentially avert an adverse age discrimination claim.

Conversely, the retention of staff in the current workforce longer than was required could have implications for changing the makeup of the Workforce to better reflect the community it serves. As part of each decision-making process, each re-appointment application should be subjected to robust equality analysis to ensure there is no impact on developing a more diverse workforce.

This Retention Policy may also support the development of employees as the re-appointed person would need to work with their Line Manager to upskill and share their experience with other team members.

In line with the retention policy staff are only re-appointed on temporary or fixed term contracts to ensure the medium and longer term people and equality objectives are not negatively impacted.

Legal Implications

The WMFRA should have a clear and transparent position on the re-engagement and re-appointment of retired personnel. This will reduce the risk from unsuccessful candidates bringing a claim against the service based on their retirement status to the Employment Tribunal based on age discrimination.

The National Framework paragraphs 6.7 - 6.11 provide a clear position on the re-engagement of Principal Officers and this position is clearly outlined within the Retention policy.

Financial Implications

Adopting a Retention Policy will provide opportunities for ongoing financial efficiencies.

There may also be potential savings in terms of any subsequent abatement and reduced pensions contributions, however, this will be based on the individual circumstances.

The savings that this approach may achieve are dependent upon the retirement profile in the Service at the time.

Environmental Implications

There are no environmental implications.

Background Papers

The Fire and Rescue National Framework for England 2018.

The contact name for this Karen Gowreesunker, Clerk to the Authority, and Strategic Enabler Strategy.

Appendix 1 – Retention policy

1

STRATEGY

West Midlands Fire Service is committed to maintaining an efficient and effective workforce and recognises the valuable contribution of all employees in achieving its objectives.

In certain circumstances the re-engagement of staff after retirement can support the Service in achieving its objectives, and whilst there is no automatic right to re-engagement after retirement, West Midlands Fire Service will consider re-engagement after retirement in the following circumstances:

Re-employment - retired employees will be eligible to apply for vacancies, through an open recruitment process, provided the role is fundamentally different from the post from which they retired. A simple change in hours will not be a materially different employment. To be a materially different employment the duties and/or the level of responsibility in the new employment must be different from those in the old employment. Where there is doubt, advice can be sought from People Support Services however, individuals are responsible for obtaining their own independent advice on tax and financial implications of re-engagement.

Re-appointment - on occasions when it would be in the interests of public safety and/or efficiency, the Service will permit retired employees to be either temporarily re-appointed or given a fixed term contract into the role they were undertaking prior to their retirement. This can only be done with the express agreement from the Chief Fire Officer or Fire Authority members in the case of re-engagement of principal officers.

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PURPOSE

The purpose of this policy is to ensure that the Service consistently and fairly applies re-engagement after retirement procedures across all employment groups in accordance with relevant government guidance, legislation and pension regulations.

1 Scope

- 1.1. The policy applies to all employees who are directly employed by the Authority and are members of the Local Government Pension Scheme (LGPS), the Firefighters Pension Scheme (FPS), the New Firefighters Pension Scheme (NFPS) and the Firefighters Pensions Scheme 2015 who have retired from their role either on a voluntary basis, through ill health or through redundancy and are in receipt of their pension scheme benefits or who have submitted their notice to retire.

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RESPONSIBILITY

3.1. West Midlands Fire Authority is responsible for:

- approving the Authority's Retention Policy and delegating the day to day management to the Chief Fire Officer
- In line with the Retention Policy approve the re-appointment and consideration of re-engagement of principal officers

3.2. The Chief Fire Officer (CFO) is responsible for:

- having overall accountability for this Retention Policy and its implementation
- reviewing, considering and determining the outcome of applications for re-appointment within the Service in line with the Authority's Scheme of Delegation.

3.3. The Strategic Enabler for People is responsible for:

- Supporting the CFO in reviewing, considering and determining the outcome of applications for re-employment within the Service below the level of Principal Officer.
- agreeing the implementation of a re-employment opportunity as a resourcing tool for internal vacancies as appropriate
- liaising with PSS and Finance in the context of employment legislation and pension regulations as applicable

3.4. People Support Services are responsible for:

- implementing this Retention Policy
- providing training and development to those involved in the application of this policy
- ensuring that the policy and procedure meets and continues to meet the requirements of employment legislation and pension regulations
- effectively communicating this policy and procedure to all staff
- evaluation, review, administration and management of the process of this policy
- providing accurate information regarding procedures to managers and employees.

3.5. Managers are responsible for:

- implementing and ensuring that employees are aware of this policy.
- Development of Business cases to support decision making

3.6. Individuals are responsible for:

- familiarising themselves and following the principles of this policy/process.
- obtaining their own independent advice on tax and other financial implications of re-engagement. The Authority will not accept liability for tax or other financial charges incurred by individuals.

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PROCEDURES

4.1. Introduction

This is the procedure that underpins and implements West Midlands Fire Services Retention Policy.

4.2. Principles

4.2.1. Re-employment

Re-employment after retirement into a vacant post that is fundamentally different to the post from which an individual retired will follow a fair, open and competitive recruitment and selection process in accordance with the Services Recruitment & Selection Policy.

4.2.2. Re-appointment

Re-appointment after retirement into the same or a similar role may be considered where: -

- the re-appointment is required for the operational effectiveness of the Authority and in the interests of public safety
- the person who has retired/is retiring has critical skills and knowledge which are not widely available and which the Authority needs to retain due to an impact on Corporate Risk
- the re-appointment offers efficiencies or is cost neutral in terms of budget setting and financial management
- the person who has retired/is retiring is engaged on a project which is near to completion and where retention of their skills is required on a temporary basis until project completion

Any application for re-appointment will either be on a temporary or fixed term basis and must be supported by a detailed business case including the consideration that has been given to the following:

- the wishes of the individual
- the risk of not re-appointing the individual
- impact of the re-appointment the individual
- financial implications and efficiencies
- the individual's performance, sickness/discipline record and fitness for the role
- the skills and knowledge of the individual

For all appointments at Principal Officer level, approval will be subject to agreement by the Appointments Committee taking into account the legislative requirements of FRA Chief Fire Officer appointment procedures. The reason why the re-appointment was

necessary with consideration to the points above, and alternative approaches were deemed not appropriate, must be published.

4.2.3. Break in service

Re-employment may be on a temporary or permanent basis, re-appointment will only be offered on a temporary or fixed term basis. A formal break in service will be required for any re-appointment.

For members of the FPS or NFPS who have retired between the age of 50 and 55 and have a Protected Pension Age a break in service of at least six months is required if re-engaged into a grey book role.

For members of the FPS or NFPS who have retired between the age of 50 and 55 and have a Protected Pension Age a break in service of at least one month is required for re-engagement to a fundamentally different post, such as a green book role.

For all other cases, a break of one complete calendar month will be required. This is to ensure that in the event of a redundancy claim the service will not be continuous from the original date of appointment.

Breaks in service cannot be taken as paid leave.

4.2.4 Abatement

Employees re-employed after retirement who are in receipt of benefits from their government pension scheme will have their pension abated.

This means that the pension payment will be withheld in whole or part if the annual salary from the new post when added to the annual pension payment exceeds the annual salary payment at the time of retirement.

Where this is the case, the annual pension will be reduced by the amount by which the pension received and pay in the new post exceeds the pay received in the previous role.

All individuals should ensure they have discussed matters fully with their pension provider before they begin the re-employment application process.

Inter service abatement - In determining whether to apply inter-service abatement, consideration will be given to any pension benefit currently being received by the employee concerned.

Employees retiring from West Midlands Fire Authority but recommencing employment with a different “scheme employer” (i.e. another Local Authority) should be aware that abatement rules may vary depending on the scheme employers own specific policy.

4.2.5. Protected Pension Age

Employees who are members of the FPS who are able to retire between 50 and before 55 years of age are able to do so because they have a “Protected Pension Age”. Re-engagement under certain conditions can result in them losing protections afforded to them under the “Protected Pension Age” rules and may result in them incurring a tax liability on pension. Employees must ensure that they have taken advice from an appropriate person e.g. tax advisor as the Authority will not accept liability for tax charges incurred by individuals who have lost their “Protected Pension Age” status.

The Authority will require any member of the FPS who has a “Protected Pension Age” to confirm in writing that they have taken tax advice before any offer of re-engagement would be confirmed.

4.2.6. Pension Entitlement on Re-employment

Previous service will not count towards continuous service for any purpose.

If any former uniformed employee is re-employed into a uniformed role on Grey or Gold Book terms and conditions, they will automatically be enrolled into the Firefighter’s Pension Scheme 2015, provided that their new role includes a requirement to engage

in firefighting duties or attendance at other emergencies. This applies if they work full time or part time on a permanent basis.

Former uniformed employees who are re-employed into a non-uniformed role on Grey or Gold Book terms and conditions and non-uniformed employees who are re-engaged will automatically be enrolled into the LGPS. This applies if they work full time or part time or on a temporary or permanent basis.

Employees can opt out of either pension scheme if they wish within 3 months of re-joining the Authority. To receive reimbursement of automatic pension contributions, employees must notify PSS that they wish to opt out within 3 months of the commencement of their re-engagement.

4.2.7. Contractual Entitlements on Re-employment

Specific details of entitlements to annual leave, sick leave etc. will be detailed in the employee's new contract of employment and uniformed employees who subsequently re-join the Authority in a Green Book role will be subject to the terms and conditions of employment outlined in the National Joint Council for Local Government National Agreement on Pay and Conditions of Service ("The Green Book").

4.2.8. Re-employment after Ill Health Retirement

Individuals who have been retired on ill health grounds who are subsequently deemed fit to undertake work will be eligible to apply for re-employment through open competition. Their entitlement to continue receiving their ill health pension benefits will depend on the scheme they are in therefore individuals are encouraged to take advice in relation to their specific scheme arrangements before making an application for re-employment.

4.3. Monitoring

The Strategic Enabler for PSS will monitor activities under this policy and procedure and will have responsibility to ensure issues outlined in the policy are met. Continuous improvement involves ensuring this policy is in line with best practice and legislative changes.

4.4. Review

This policy will be reviewed in accordance with the Services flexible policy review programme, or where any new or emerging political, social, technological, legislative, environmental or reputational changes require it to be.

Retention Policy**Business Case**

The Business case will be submitted to the SE PSS for consideration and to liaise with SE People and the Chief Fire Officer. Once a decision is made the SE PSS will arrange for the outcome to be fed back to the referring manager.

Title of Business Case	
Submitted by	
Role and Section	
Phone	
Email	

1. Following notification of a person's intention to retire from the Service the Line Manager will review and assess the role to consider any specialist knowledge, skill and/or experience which is required to ensure the health safety and wellbeing of our employees or the delivery of the Plan to keep communities safe. (please state which)

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Describe how you plan to retain these essential skills and consider the impact of this on other employees, how you will mitigate any negative impact whilst considering the Service's drive to have a workforce reflective of its community. Your People Support Services (PSS) Business Partner will support you to answer this question.

3. Name of Strategic Enabler

You will need to have received the approval of your Strategic Enabler. Prior to this business case being supported by SE People and approved by the Chief Fire Officer.

<p>4. Name of People Support Services (PSS) Business Partner</p> <p>You should discuss your Business Case with your PSS Business Partner. This is to consider and mitigate any impacts on other activities across the Service such as restructures, together with any other People and/or People related policy impacts/ Copy in your PSS Business Partner when submitting your Business Case.</p>	
<p>5. Stakeholder Engagement</p> <p>List identified stakeholders and engagement that has taken place, together with further engagement required. Consider how your Business Case might impact on your stakeholders who should include Trade Unions/Representative Bodies.</p>	
<p>6. Describe how your Business Case supports the <u>Organisational strategy</u>.</p> <p>Include <u>Environmental and Sustainability strategy</u> and Digital and Data strategy.</p>	

<p>7. Does your Business Case impact upon our Community Risk Management Plan (CRMP)?</p> <p>Consider speaking to the Community Risk Management Coordinator to further your understanding.</p>	
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<p>What are the legal implications of the work covered in this Business Case?</p> <p>Consider if your Business Case supports legislation or a National Framework. Could it impact on reputational risk such as negative publicity/public perception. Liaise with your PSS Business Partner to further your understanding.</p>	
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8. Are there any financial implications associated with the work covered in this Business Case?

Consider if there are any related costs and identify funding. Are there any funding/return on investment opportunities? Will your Business Case create income generation? Liaising with your Finance Liaison Officer (FLO) will inform them of any related costs to see if spends can be supported and to further your understanding.

Are there any risks to the completion of this Business Case?

Have you identified anything that may prevent the aim of your Business Case from being achieved? If you have, how can these be mitigated?

Communications Plan and Timeframe

Outline your communications plan. Consider how you will communicate your Business Case and supporting rationale to your team and representative bodies or other interested groups.

We are interested to understand your experience when completing this Business Case template. To help us understand if this and the supporting guidance aided your completion, or if further improvements could be made, please complete the feedback form below.