



Dorset Fire Authority

MEETING	Dorset Fire Authority
DATE OF MEETING	16 June 2015
OFFICER	Chief Fire Officer
SUBJECT OF THE REPORT	Retained Firefighters' Union (RFU) Recognition
EXECUTIVE SUMMARY	<p>Effective communication with our recognised trade unions is vital for the successful transition to our new Service. Trade unions are a key stakeholder and, whilst we are keen to engage with our unions, we have a legal requirement to inform, consult and negotiate with our recognised trade unions.</p> <p>In readiness for Combination and the associated consultation and negotiation placed on the Authority, an Industrial Relations Protocol has been developed and approved by the Joint Committee.</p> <p>The report introducing the protocol identified the differing arrangements in place for the Retained Firefighters' Union (RFU) within each Service.</p> <p>Within Wiltshire Fire and Rescue Service, the RFU are recognised for both negotiation and consultation purposes whilst Dorset Fire and Rescue Service recognise the RFU for consultation purposes only.</p> <p>As we are required to inform and consult with trade unions prior to the transfer to the new organisation, the differing arrangements between Services will cause problems for our joint consultation and negotiation arrangements.</p> <p>This report outlines the background to the National Joint Council's (NJC) position on consultation and negotiation arrangements, provides an overview of legal impacts on trade union recognition when in a transfer situation and outlines the options available to the DFA in order to resolve this issue in the interim</p>

RISK ASSESSMENT	<p>Our trade unions are a key organisational stakeholder. We have a legal duty to inform, consult and, where necessary, negotiate with our trade unions.</p> <p>In a TUPE transfer situation, there are protective awards should it be found that we failed to carry out our consultation obligations.</p> <p>The FBU have indicated that they are not in support of the RFU gaining negotiating rights and believe that this will adversely affect industrial relations</p>
COMMUNITY IMPACT ASSESSMENT <i>Note: If the matrix indicates negative impacts on the community or staff, an equality impact assessment (EIA) will need to be completed.</i>	<p>None</p>
BUDGET IMPLICATIONS	<p>Potential of protective awards should any TUPE related matter be referred to an Employment Tribunal.</p>
RECOMMENDATIONS	<p>It is recommended that Members consider the issues outline in this paper and approve a request by the Dorset RFU for parity of recognition.</p>
BACKGROUND PAPERS	<p>None</p>
APPENDICES	<p>A: Formal request from RFU</p>
REPORT ORIGINATOR AND CONTACT	<p>Darran Gunter, Chief Fire Officer Tel: (01305) 252604</p>

1. Introduction

- 1.1 The Service is committed to joint working with the recognised representative bodies for the benefit of the Service, our employees and the local community that we serve.
- 1.2 Effective communication with our recognised trade unions is vital for the successful transition to our new Service. Trade unions are a key stakeholder and, whilst we are keen to engage with our unions, we have a legal requirement to inform, consult and negotiate with our recognised trade unions.
- 1.3 In readiness for this, the People and Organisational Design Workstream developed an Industrial Relations Protocol and a paper outlining the protocol was presented to the Joint Committee in April 2015.
- 1.4 In advance of this meeting, the draft paper was discussed by the Joint Leadership Team (JLT) who noted that differing arrangements were in place for the RFU within each Service. The table below outlines the current arrangements in place.

Representative body	Dorset FRS	Wiltshire FRS
UNISON	Recognised for consultation and negotiation purposes for Green Book staff	Recognised for consultation and negotiation purposes for Green Book staff
Association of Principal Fire Officers (APFO)	Recognised for consultation and negotiation purposes for Gold Book staff	Recognised for consultation and negotiation purposes for Gold Book staff
Fire Brigades' Union (FBU)	Recognised for consultation and negotiation purposes for Grey Book staff	Recognised for consultation and negotiation purposes for Grey Book staff
Fire Officers' Association (FOA)	Recognised for consultation purposes for Grey Book staff	Recognised for consultation purposes for Grey Book staff
Retained Firefighters' Union (RFU)	Recognised for consultation purposes for Grey Book staff	Recognised for consultation and negotiation purposes for Grey Book RDS staff

2. Recognition of Trade Unions

- 2.1 The National Joint Council (NJC) are responsible for the negotiations on national pay and conditions of service, commonly known as the Grey Book. At a national level, originally the only trade union that represented employees on the (NJC) for Local Authorities' Fire Brigades was the FBU.
- 2.2 The last (6th edition) of the Grey Book was issued in 2004, and contains the following statement in its preface:

The NJC has a strong commitment to joint consultation and negotiation, with a view to reaching agreement, between fire and rescue authorities and recognised trade unions at all levels. To this end the NJC encourages employees to join independent, certified recognised trade unions. The NJC believes that co-operation between employers, employees and the trade unions will help ensure successful service delivery.

- 2.3 In April 2005, the National Employers issued a circular with a protocol for recognising the RFU and FOA at a national level for consultation purposes. This protocol was intended as an interim arrangement pending the formal inclusion of both unions within the national collective bargaining procedures.
- 2.4 In September 2007, the national constitution was modified to introduce a mechanism for minority trade union representation. This was intended to enable FOA and RFU to be fully recognised nationally subject to a count of members within three months. A Middle Managers Negotiating Body (MMNB) was created to deal with issues relating to employees in Station Manager to Area Manager roles.
- 2.5 At the time, the RFU decided not to accept the invitation to join the NJC with the subsequent count of employee membership within the specified employee group, ie Firefighter to Watch Manager. The RFU believed that the method of calculating and allocating seats on the Employees' Side of the NJC was unbalanced as the RFU recruits only staff who hold an Retained Duty System (RDS) contract and therefore the maximum number of seats that could be obtained was three (out of the 14 seats for Employee representatives).
- 2.6 The FOA took up this national representation and, following an audited membership count, was entitled to one seat on the MMNB.

3. The Industrial Relations Protocol

- 3.1 The Joint Protocol for Good Industrial Relations in the Fire and Rescue Service supplements the model consultation and negotiation procedures in the Grey Book.
- 3.2 The Protocol sets out how Service and union representatives will seek to work together for the benefit of the Service, its employees and local communities and sets out a number of principles. The document also sets out the difference between consultation and negotiation. This explanation is set out below:

Consultation and Negotiation

To assist all parties at local level the NJC has already agreed model consultation and negotiation procedures which are contained in the Scheme of Conditions of Service (Grey Book) that promote joint solution seeking. Both procedures contain principles which all parties have agreed to adhere to. In the case of the consultation procedure parties at local level have agreed to identify and work within an appropriate timescale. In the case of the negotiation procedure timescales are set out which should be adhered to in order to ensure timely

resolution. This is equally the case where alternative timescales have been jointly agreed at local level.

Both model procedures contain definitions of the circumstances in which they are to be used. In the case of consultation, matters shall be those that do not require collective agreement. In the case of negotiation, matters shall be those that do.

The simplest explanation of the difference between consultation and negotiation is that anything which is contractual and therefore needs the agreement of the individual employee or their trade union on their behalf is negotiation. Everything else is consultation.

The standard issues referred to in a person's contract are matters which require agreement to change and are therefore negotiable. Basically this covers remuneration, hours of work, leave entitlements and any other conditions of service. It may also cover local policies and procedures not specified within the Scheme of Conditions of Service (Grey Book), or NJC circulars, where they are within the individual's contract and the contract does not provide that the employer has the right to amend them from time to time without agreement. It may also include local practices that are not contained within an individual's contract but may be implied contractual terms. Everything else is consultation.

Both processes should be conducted with a view to reaching agreement and therefore should include an opportunity to consider alternative approaches to an issue. Where agreement cannot be reached both parties will consider further options but in doing so commit to taking unilateral action only as a means of last resort, ie industrial action or imposition of change.

4. Local Meeting Arrangements

- 4.1 The Service have local formal meetings with each union (FBU, UNISON, RFU and FOA) that are generally held on a quarterly basis. Meetings with the FBU and UNISON deal with collective matters, including negotiation and consultation, whilst meetings with FOA and RFU deal with consultation only. All meetings cover information sharing.
- 4.2 Outside of these formal structured meetings, there are additional informal meetings to work towards resolving matters that arise.
- 4.3 The national position of the FBU is that they refuse to attend joint meetings with the RFU. Locally the FBU maintain this position, but have however attended 'briefings' with the RFU.
- 4.4 Whilst pay is negotiated at national level, the 6th Edition of the Grey Book includes increased flexibility to negotiate other terms and conditions locally rather than at national level. As the Service face the financial challenges ahead, there is an increasing trend of local negotiations on terms and conditions.

5. Transfer of Undertakings Protection of Employment Regulations (TUPE)

- 5.1 On 6 April 2006, the revised Transfer of Undertakings (Protection of Employment) Regulations (called 'the TUPE Regulations' and 'the Regulations' in this guidance) came into force. The TUPE Regulations are amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (called 'the 2014 Regulations' in this guidance), which came into force on 31 January 2014.
- 5.2 The Regulations are designed to protect the rights of employees in a transfer situation enabling them to enjoy the same terms and conditions, with continuity of employment, as formerly enjoyed by them.
- 5.3 Whilst the Regulations protect and transfer collectively agreed terms and conditions of individual employees, trade union recognition is only transferred where the organised grouping maintains 'its distinct identity' (autonomy). It is clear that the combination of WFRS and DFRS to create a new single Fire Authority will mean that neither grouping of employees will maintain its autonomy.
- 5.4 As a result of this, trade union recognition will not to the new organisation and all the trade unions must seek recognition by the new organisation. This is a matter that will be picked up by the Combination programme.

6. Impact on Industrial Relations

- 6.1 DFRS currently enjoys good industrial relations with all recognised trade unions.
- 6.2 The DFRS RFU are keen to be recognised for negotiation rights. They have informally requested to be recognised for negotiating purposes in the past but following discussions this has never been formally requested.
- 6.3 The DFRS FOA are aware that the matter of RFU recognition is being discussed by the Fire Authority and have indicated that they would like to be recognised for negotiation purposes. A formal request for recognition has not yet been made to either Service. Should one be made, each Service will need to ensure a consistent response is provided.
- 6.4 The DFRS FBU are also aware that this matter is has arisen. They have expressed objections to the RFU being considered for recognition and have stated that they feel it will have a negative impact on industrial relations.

7. Impact on Combination Programme

- 7.1 As advised previously there is a legal requirement to inform and consult with Trade Unions prior to the transfer to the new Authority. The differing arrangements in place with regards to the RFU will cause problems when conducting our joint consultation and negotiation arrangements.

8. Conclusion

- 8.1 The transfer to the new organisation will take effect on 1 April 2016, at which point the recognition rights enjoyed by trade unions will not transfer under TUPE and the unions will need to follow a recognition process.
- 8.2 We will shortly commence informal consultation and, in the Autumn, move into a formal consultation and negotiation process.
- 8.3 In the interim period the differing recognition arrangements must be addressed to ensure consultation and negotiation is carried out effectively and compliantly.
- 8.4 In light of this, Members will need to consider the approval of a formal request by Dorset RFU for parity of recognition. The written request is attached at Appendix A.
- 8.5 FOA representatives in each Service will be advised in due course that, if they wish to be recognised, they each need to make a formal request that can be considered by the respective Authorities in a consistent manner.

DARRAN GUNTER

Chief Fire Officer

8 June 2015

SERVING FIREFIGHTERS



SERVING THE COMMUNITY

RFU

Firefighter House
Station Road
Attleborough
Norfolk NR17 2AS
t: 01953 455005
f: 01953 454760
w.therfu.org
e: hq@therfu.org

John Barton: Chief Executive Officer

Your ref:

Our ref: TJA/Dorset

Date: 03 June 2015

Mr Darran Gunter
Chief Fire Officer
Dorset Fire and Rescue Service
Peverell Avenue West
Poundbury
Dorchester
Dorset DT1 3SU

Dear Darran

Recognition of RFU by Dorset Fire Authority

Our Secretary, Andy Elliott, advises me that following a recent meeting with service management that you are considering the matter of our recognition including collective bargaining rights at a local level for the RFU in Dorset and I very much welcome this development.

Whilst we have been recognised by the national employers for over 10 of years now, the process of obtaining full recognition in individual services has been more successful in some areas than others for a variety of reasons.

We fully understand that such recognition is always subject to the approval of the respective Fire Authority and requires the full support of the Chief Fire Officer. It also depends to a greater extent on the Authority having confidence in our being professional in our engagement with the service. In this regard I am confident that Paul Jarvis and more recently Andy Elliott, has ably demonstrated our values, qualities and credibility whilst operating under the limitations of the existing recognition agreement.

The Fire and Rescue Service is operating in a distinctly challenging climate and I believe that given the challenges ahead the RFU's non militant approach and its positive and supportive contribution will benefit the service moving forward.

Andy has asked me to provide you with a list of FRS where we have existing agreements similar to what you propose with other services in the UK and I am pleased to be able to do so.

The services listed overleaf are those where we have full recognition including collective bargaining rights and enjoy positive engagement with the service.

Cambridgeshire
Cornwall
Cumbria
Devon and Somerset
Dorset
Essex
Gloucestershire
Hampshire
Hereford and Worcestershire
Humberside
Lincolnshire

Mid and West Wales
Norfolk
Northamptonshire
North Yorkshire
Nottinghamshire
Scotland
Shropshire
Staffordshire
Suffolk
Warwickshire
West Sussex
Wiltshire

If you should require any further information, please do not hesitate to contact me.

Yours sincerely

Tristan Ashby
Deputy Chief Executive Officer

Cc Andy Elliott