

## REPORT OF THE CHIEF FIRE OFFICER

# CO-RESPONDER LEGAL CASE FUNDING

### 1 Purpose of Report

To seek the opinion of the Human Resources Committee, in response to the request made by the Employers in Circular EMP/01/06, that Fire and Rescue Services share the cost of the impending legal action by Nottinghamshire and Lincolnshire in relation to co-responding.

### 2 Recommendations

Members are asked to consider whether or not to share the legal costs associated with the proposed action, as set out in the Circular and to make recommendations to the Fire Authority.

### 3 Background

Co-responding has been a contentious issue since it was introduced during the pay agreement and the Fire Brigades Union has been against the introduction of the role. The National Employers have consistently responded that there is a contractual link in the Scheme of Conditions of Service to the role maps agreed within the National Joint Council and that co-responder schemes are simply an example of the type of work that can be required through those role maps. In taking this position the National Employers have been mindful of the advice provided by both those responsible for drawing up the role maps, and legal advisers.

Two authorities, Nottinghamshire and Lincolnshire, have now indicated to the Fire Brigades Union their intention to seek resolution of this matter through a legal route. Unless the Fire Brigades Union accepts the authorities' position the matter will be pursued through the High Court.



## **4 Request for Legal Case Funding**

Circular EMP/1/06 (attached at Appendix A) encourages all UK Fire and Rescue Services to commit to a cost-sharing approach on this matter, similar to that previously undertaken on the matter of retained firefighters and the application of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations, as the judgement will apply to all Fire and Rescue Services. The reply form asks each authority to indicate whether it is willing to share the total cost, estimated to be at least £125,000 (not including appeal costs), proportionately accordingly to the number of uniformed employees in post as at February 2005.

The response deadline is 21 February, which does not enable officers to consult the Fire Authority. Officers have, therefore, responded to the request, indicating that the Fire Authority will be unable to commit to sharing costs until its Members have been consulted (see Appendix C).

Members will note that the situation regarding cost sharing and retained firefighters is referred to above. Employers Circular EMP/1/01 dealt with this issue and is attached for your reference at Appendix B. It asked, at paragraph 13, that individual Services agree to be represented and to contribute towards the legal costs on a basis proportionate to the number of retained firefighters within their Service.

If the same agreement were to be applied here, all Fire and Rescue Services are required under the National Framework Document to consider the use of co-responder schemes and, therefore, could potentially employ people in a co-responder role. The situation in Shropshire is that, after exploratory talks in 2002, the Ambulance Service indicated that they did not wish to proceed. In view of the requirement of the National Framework Document, however, officers are currently exploring this issue with the Ambulance Service again.

Members should also note that we have requested clarification from the Local Government Employers as to whether the costs discussed at paragraph 9 (Appendix A) refer to total number of uniformed employees or just those conditioned to the wholetime duty system.

## **5 Legal Comment**

The Fire Authority has the power to contribute towards the costs incurred by Nottinghamshire and Lincolnshire, if Members wish.

## **6 Financial Implications**

There are financial implications to this paper but officers are as yet unaware of what they may be.

## **7 Equality and Diversity Implications**

There are no equality or diversity issues arising from this report.



## **8 Appendices**

**Appendix A** Circular EMP/1/06

**Appendix B** Circular EMP/1/01

**Appendix C** Response to National Employers 3 February 2006

## **9 Background Papers**

There are no background papers to this report.

For further information about this report please contact Louise McKenzie, Assistant Chief Officer, on 01743 260280.



Layden House, 76-86 Turnmill Street,  
London, EC1M 5LG  
Telephone 020 7296 6600 Fax 020 7296 6686  
Employers' Secretary, Mike Walker

Direct Dial  
020 7296 6723  
020 7296 6712

e-mail: fire.queries@lg-employers.gov.uk

## **FIRE BRIGADES National Employers**

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**To: Chief Fire Officers  
Chief Executives/Clerks to Fire Authorities  
Chairs of Fire Authorities**

**Members of the Employers' Side of the NJC**

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30 January 2006

### **CIRCULAR EMP/1/06**

Dear Sir/Madam

#### **CO-RESPONDER SCHEMES**

1. Authorities will be aware of the Fire Brigades Union opposition to the introduction of co-responder schemes involving the fire and rescue service throughout the UK.
2. The FBU argue that an authority cannot require its employees to carry out such work.
3. The National Employers have consistently responded that there is a contractual link in the Scheme of Conditions of Service to the rolemaps agreed within the National Joint Council. Co-responder schemes are simply an example of the work that can be required through those rolemaps.
4. In taking this position the National Employers have been mindful of the advice provided by both those responsible for drawing-up the rolemaps, and legal advisers.
5. Two authorities, Nottinghamshire and Lincolnshire, have now indicated to the Fire Brigades Union their intention to seek resolution of this matter through a legal route. Unless the Fire Brigades Union accept the authority's position the matter will be pursued through the High Court.
6. The National Employers would wish to encourage all authorities throughout the UK to support this action. In particular, authorities are encouraged to commit to a cost-sharing approach similar to that previously undertaken on the matter of retained firefighters and the application of the Part-Time Workers (Prevention of less favourable treatment) Regulations.

7. The legal teams for both of the authorities will work closely with that of the National Employers to ensure consistency of position and to reduce duplication wherever possible. The Employers' Secretariat will also continue to assist the parties.
8. it is anticipated that costs at this stage will be in the region of £125,000. Should an appeal prove necessary further costs would be incurred. The court may also make an award in respect of costs to the benefit of the successful party.
9. The intention would be that each authority covers a share of the cost pro-rata to the number of uniformed employees in post as at February 2005 (the date of the most recent figures provided by authorities to the Secretariat).
10. The National Employers very much hope that your authority will be able to support this request. You will appreciate the benefit to all Fire and Rescue Services of achieving legal clarity on this question.
11. A pro-forma is attached for completion and return by no later than **21<sup>st</sup> February 2006**
12. If you require any further information please do not hesitate to contact me.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'G. Gittins', with a stylized flourish underneath.

*Gill Gittins*  
**Principal Negotiating Officer**

## CO-RESPONDER SCHEMES

Name of authority:

Name of individual:

Position in authority:

The authority agrees to meet a proportion of the costs (proportionate to the number of uniformed employees in post in February 2005, as provided to the Employers Secretariat) incurred through legal action on the matter referred to in circular EMP/1/06.

*Please indicate by adding an X*

Yes

No

**Please return this form via by no later than 21<sup>st</sup> February 2006 to:**

Jacky.teasell@lg-employers.gov.uk

Layden House, 76-86 Turnmill Street,  
London, EC1M 5LG  
Telephone 020 7296 6600 Fax 020 7296 6686  
Employers' Secretary, Mike Walker

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## **FIRE BRIGADES National Employers**

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**To: Chief Fire Officers/Firemasters  
Chief Executives/Clerks to Fire Authorities  
Chairs of Fire Authorities**

**Members of the Employers' Side of the NJC**

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4th January 2001

# **URGENT**

## **CIRCULAR EMP/1/01**

Dear Sir/Madam

### **RETAINED FIREFIGHTERS AND THE PART-TIME WORKERS (PREVENTION OF LESS FAVOURABLE TREATMENT) REGULATIONS**

1. I am writing to let you know the latest position regarding the application to retained firefighters of the Part-time Workers Regulations. **Please read this circular immediately. It requires urgent action by all brigades in the United Kingdom (other than London and Merseyside).**
2. You will be aware from previous circulars that Employment Tribunal applications have been lodged by members of the Retained Firefighters Union and the Fire Brigades Union respectively. The latest position regarding these cases is set out below.

#### ***RFU applications***

3. Individual applications have been lodged by 2,563 members of the RFU against individual fire authorities. Most of these applications cite the Secretary of State as the second respondent because of his statutory responsibility for the Firefighters' Pension Scheme.
4. In most regions the pensions element of the applications has been stayed pending the outcome of the *Preston* case, which concerns equal pay issues also included in the RFU cases. However, the Tribunals have said that the pay and conditions element of the RFU applications should proceed.

### ***FBU applications***

5. The FBU has lodged one application with the Employment Tribunals for each of the 56 brigades in the UK that employs retained firefighters (ie all brigades except London and Merseyside) together with the Isle of Man (which is not covered by the NJC). Each of those applications names all retained firefighters in that brigade who are members of the FBU so there are effectively some 16,000 FBU applications.
6. All the FBU applications cite the Secretary of State as the second respondent. However, because the FBU applications cite only the Part-time Workers Regulations (and not equal pay issues) the pensions element has not been stayed. Both the pay and conditions and pension elements of the FBU claims are therefore proceeding.

### ***All applications***

7. Both the FBU and RFU cases (except for the pensions element of the RFU cases) are now effectively at the same stage in the Tribunal system. A “directions hearing” will be required with solicitors for all the parties (ie the FBU, the RFU and each authority in England and Wales that employs retained firefighters). The directions hearing will determine the process by which the applications will be taken forward through the system. It is anticipated that the Tribunal Boards in Scotland and Northern Ireland will be asked to hold their claims pending the outcome of the process in England and Wales.
8. The Employers and FBU have said that they believe the present uncertainty on the application of the Regulations is unhelpful and have therefore agreed to co-operate in ensuring that test cases on this point are brought as speedily as possible. To that end the Employers and the FBU are continuing to work closely together in achieving this aim. Because the Secretary of State is cited as second respondent in the applications the Joint Secretaries have written to the Minister of State at the Home Office seeking Home Office agreement to this strategy.
9. It will be for the Employment Tribunals to agree whether the agreed test cases are appropriate and also whether there should be an RFU test case or cases.

### ***Representation at the directions hearing***

10. Because each fire authority is the employer it is they rather than the National Employers who must respond to the claims. However, the Employers have agreed to assist brigades by asking the Employers’ Secretariat to act as co-ordinators over legal representation for all brigades. The Employers’ Side is therefore recommending that brigades agree to be represented at the directions hearing by Beachcroft Wansboroughs (solicitors to the Employers’ Organisation for Local Government). This will ensure commonality of approach and significant cost savings.
11. We anticipate that the total costs of the legal work currently being undertaken and for the directions hearing itself will be about £8,000, which would be charged to individual brigades in proportion to the number of retained firefighters they employ. If all brigades were to agree to participate in this joint approach then the cost of each individual brigade would be minimal. Any brigade (in England and Wales) that did not wish to participate



would have to make its own arrangements for the representation at the directions hearing and meet its own costs. The directions hearing will cover both the FBU and RFU cases so brigades agreeing to the joint approach will not have to take any further action themselves in terms of making an initial response to the applications.

12. The directions hearing applies only to England and Wales. However, in anticipation that the claims in Scotland and Northern Ireland will be held pending the outcome in England and Wales, the Employers have agreed that all brigades in the United Kingdom be asked to contribute to the legal costs.
13. The FBU applications will shortly be served on individual authorities by the Regional Tribunal Boards. Authorities will have twenty-one days to respond to those applications. Could you therefore provide a brief written response **as soon as possible but in any event no later than 12th January** confirming:
  - (i) that you are content with your authority to be represented at the directions hearing by Beachcroft Wansboroughs (fire authorities in England and Wales only);
  - (ii) that you will contribute towards the legal costs incurred by the Employers' Organisation for Local Government (see paragraph 11 above) on a basis proportionate to the number of retained firefighters in your brigade.
14. Please respond to Gill Gittins by one of the following:

e-mail	<a href="mailto:gill.gittins@lg-employers.gov.uk">gill.gittins@lg-employers.gov.uk</a>
Fax	020 7296 6751
15. LGA and COSLA representatives on the Employers' Side, on behalf of their respective fire authorities, both support this joint approach to legal representation.

Yours faithfully

**Phil White**  
**Assistant Employers' Secretary**

**From:** Louise McKenzie  
**Sent:** 03 February 2006 17:28  
**To:** 'Jacky.Teasell@lg-employers.gov.uk'  
**Subject:** Co-responder Legal Funding (Circular EMP/01/06)

Dear Jacky

Can you please clarify the wording in paragraph 9 of the above circular where it states that:

*'the intention would be that each authority covers a share of the costs pro-rata to the number of uniformed employees in post as at February 2005.'*

Does this mean all duty systems, or just wholetime? As with many other Brigades (including Lincolnshire and Nottinghamshire), we already have a number of retained firefighters undertaking the co-responder role on a voluntary basis. In view of this, and of the nature of a retained firefighter's role, we do not envisage the need to compel this group of staff to undertake co-responding. When taking into account also that many retained personnel are not members of the FBU, it does not appear equitable to us that the costs of any court actions are shared as described in the Circular. We would propose that the costs are shared based solely on the numbers of wholetime operational firefighters.

Please also note that we need to obtain agreement from our Members to enter into a cost sharing arrangement as requested within the circular. Unfortunately the earliest date we are able to put this before our Human Resources Committee is the same date as the closing date for responses (21<sup>st</sup> Feb). Any decision to spend money would then also require ratification by our full CFA at their next meeting scheduled for 10 May 2006. Therefore we will initially have to respond 'no' pending agreement from our Members, at which point we will contact you again.

Many thanks for your assistance.

***Louise***

Louise McKenzie  
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