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**NATIONAL JOINT COUNCIL  
FOR LOCAL AUTHORITY  
FIRE AND RESCUE SERVICES**

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**To: Chief Fire Officers  
Chief Executives/Clerks to Fire Authorities  
Chairs of Fire Authorities  
Directors of HR (Fire Authorities)**

**Members of the National Joint Council**

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13 April 2010

**CIRCULAR NJC/2/10**

Dear Sir/Madam

**PART-TIME WORKERS (PREVENTION OF LESS FAVOURABLE TREATMENT)  
REGULATIONS – FIRE BRIGADES UNION EMPLOYMENT TRIBUNAL CASES**

Settlement Negotiations

1. You will be aware that test cases in two authorities, Kent and Berkshire, were identified in 2001 under the above legislation. Those test cases have been subject to the Employment Tribunal, Employment Appeal Tribunal, Court of Appeal and House of Lords processes returning finally at the request of the House of Lords to the original Employment Tribunal again for re-consideration and determination.
2. The judgement of the Tribunal on that occasion was:
  - (i) The Tribunal finds and declares that the Claimants were engaged in broadly similar work as their named comparators.

- (ii) The Claimants were treated less favourably than their named comparators in respect of access to pension rights and payment for sickness absence.
  - (iii) The Respondent's arguments of justification are dismissed.
  - (iv) The Claimant's claim for increased pay for additional responsibilities is adjourned for 8 weeks."
3. The Tribunal indicated that it believed the parties should endeavour to reach a negotiated settlement. Following discussion within the respective Sides an approach was made to Tribunal to allow the parties time for those negotiations to take place. Tribunal's current expectation is that the matter will be resolved by 1 May.
4. Following what has been an extremely complex negotiation we write to advise you that a settlement in respect of the terms and conditions aspect of the case has now been agreed in principle with the FBU. Key points of the 'in principle' settlement are outlined below:
- a. the compensation covers retained duty system employees employed for any part of the reference period, 1 July 2000 to 30 June 2009
  - b. the compensation payment is pro-rata to length of service, rank/role and level of cover based on a particular date - which for those holding employment status currently will be 30 June 2009. Cover pro-rata adjustment to be not less than 75% (which reflects the pay structure)
  - c. maximum levels of payment – firefighter £675; leading firefighter/crew manager £700; watch manager/sub and station officers £725. Minimum payment of £150
  - d. in full settlement of the wide range of issues raised through this legislation:
    - Sick leave
    - Acting-up allowance

- Pay for public holidays
  - End of course leave
  - Trade union leave
  - Overtime
  - Spoiled meals allowance
  - Removals/lodging allowance
  - Recall to duty
  - Payment during suspension
  - Payment during maternity support leave
  - Special leave
  - All other claims or potential claims under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations arising from the 6<sup>th</sup> edition of the Scheme of Conditions of Service of the National Joint Council for Local Authority Fire and Rescue Services (and its predecessors) up to 30 June 2009.
  - In the case of those fire and rescue services that have introduced a local salary scheme since 1 July 2000, all other claims or potential claims under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations arising from the 6<sup>th</sup> edition of the Scheme of Conditions of Service of the National Joint Council for Local Authority Fire and Rescue Services (and its predecessors) and the local salary scheme up to 30 June 09.
- e. the exception to the above simple process will be those retained duty system employees who can evidence 9 or more months continuous non-injury related sickness absence during the reference period. In such cases individuals will be entitled to payment in accordance with a revised Grey Book sick pay calculation.
5. It is anticipated that formal agreement will be reached shortly. Authorities will be advised when this has occurred and should **take no action** in the interim.
  6. Further information will also be provided at that time on how individual employees will be advised of the outcome as well as the mechanism to

facilitate withdrawal of the remaining FBU cases that are currently stayed pending the outcome of these test cases.

7. The remaining aspect is that of pension scheme access, which is being handled by CLG. Both CLG and the FBU are mindful of the current timescale within which all negotiations relating to both aspects of these cases are due to be concluded as referred to in paragraph 3 above.

Amendments to the Scheme of Conditions of Service (Grey Book)

8. A number of amendments need to be made to the Grey Book to reflect the requirements of the Regulations. The NJC is in the process of finalising that work, which has been carried out with the assistance of respective legal representatives.
9. Those amendments will also be issued shortly.

Yours faithfully

**SARAH MESSENGER**

**MATT WRACK**

**Joint Secretaries**