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

**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

8 March 2011

CIRCULAR NJC/3/11

Dear Sir/Madam

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

Settlement Negotiations – Terms and Conditions

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. The Tribunal found in favour of the retained firefighters (who were supported by the FBU) and since then the parties have at the request of Tribunal sought to negotiate a settlement.
2. Circulars NJC/2/10 and NJC/5/10 advised that a settlement in respect of the terms and conditions aspect of the case had been agreed in principle with the Fire Brigades Union. Since then further work with respective legal representatives has been undertaken in order to identify how individual employees will be advised of the outcome as well as an appropriate mechanism to facilitate withdrawal of the remaining FBU cases that are currently stayed pending the outcome of these test cases.
3. Circular NJC/1/11 advised authorities that formal agreement was imminent and provided some advanced information in respect of data collection.

4. We write to advise you that this very complex work has now been completed and formal agreement reached.
5. Attached as **Appendix A** is a copy of the Settlement Agreement.
6. As you are aware *Popularis* has been engaged as an independent third party to handle the process of communication between fire and rescue services, the Fire Brigades Union and individuals. This overcomes the difficulties that would otherwise have arisen for both fire and rescue services and the union of one providing individual name and address details to the other. Information in respect of the independent nature of *Popularis* and how it overcomes these Data Protection issues is contained in NJC/1/11.
7. The agreement stipulates that **within 35 days of the date of agreement (the date of this circular)** the information sought in **Appendix B** to this circular will be provided directly to *Popularis*.
8. In providing this information, your attention is also drawn to paragraph 8 of the Agreement. This means that where a fire authority is aware that an existing employee on a retained duty system has a previous period of service (also on a retained duty system) with another employing authority within the reference period that period of service must also be included in the calculation of the compensation payment and the data fields completed accordingly.
9. Upon receipt of this information *Popularis* will undertake a matching exercise and advise current employees who were in post on 30 June 2010 and previously employed claimants who are FBU members of their individual settlement calculation and the timescale within which he/she should respond indicating acceptance. Once acceptance has been received *Popularis* will inform the Fire Brigades Union legal representatives who in turn, in the case of claimants, will advise the Employment Tribunal (copied to the individual's employing authority) that the case should be withdrawn. Upon receipt of confirmation that this has occurred the respective fire and rescue service will forward the settlement payment to the individual within 3 months. In the case of FBU members who are not claimants, the FBU legal representatives will provide the individual's employing authority with confirmation of acceptance. In the case of non-union claimants or non-claimants *Popularis* will provide a copy of acceptance directly to the individual's employing authority. The mechanism provides two further reminder opportunities to eligible past and present employees should they be required. By far the majority of cases will be resolved in this straight-forward manner.
10. However, there may rarely be circumstances that will require a wider process. Those circumstances are where an individual is able to show that:
 - his/her settlement calculation is incorrect based on paragraphs 5 and 6 of the Agreement

- his/her settlement calculation is incorrect because he/she has a continuous period of non-duty related sickness absence of 9 months or more during the relevant reference period
 - a period of employment on a retained duty system within the reference period (1 July 2000 to 30 June 2010) with another employing fire and rescue service has not been taken in to account.
11. In all cases the individual will respond to *Popularis* using the required form setting out their position and the evidence provided to support that position. Where the Fire Brigades Union legal representatives are content with the evidence provided they will approach the respective fire and rescue service to resolve the matter. Where the fire and rescue service is also content with the evidence provided a revised settlement calculation will be offered to the individual. Where the individual is not a union member the evidence will be forwarded directly to the relevant fire authority for consideration.
 12. In the case of FBU members, where the union legal representatives are not content with the evidence provided the individual will be notified accordingly, advised to accept the current offer or that he/she may wish to continue with the case but this could not be assisted by the union.
 13. Where the FBU legal representatives are content but the fire and rescue service is not, the union will continue to represent the individual and the claim will remain 'live'.
 14. In no case will a settlement payment be made without withdrawal of the terms and conditions aspect of an individual's Employment Tribunal case.

Flowchart

15. Attached as **Appendix C** is a copy of a flowchart which outlines the timescales relating to this mechanism to ensure settlement and withdrawal of the terms and conditions aspect of the Employment Tribunal cases.

Documentation

16. Attached as **Appendix D** are copies of all the documentation relating to the mechanism in respect of FBU members.
17. Attached as **Appendix E** are copies of all the documentation relating to the mechanism in respect of non-union members.

Data file specification

18. Circular NJC/1/11 provided advanced information on the data collection requirements and contained a data file specification. Following feedback from authorities a revised specification is attached which:
 - (a) clarifies that rank/role on 30 June 2010 is the individual's substantive role
 - (b) amends the collection of ex-employee data to that of ex-employees who had registered a claim only, rather than all ex-employees
19. **Please ensure that the revised form (attached as Appendix B) is forwarded immediately to those responsible for the collection and onward transmission of the data. Information on how to provide the data to *Popularis* is now shown on the specification.**

Pension schemes access

20. The remaining aspect of the Employment Tribunal cases is that of pension scheme access. This is a separate matter between CLG and the FBU.

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

21. Circular NJC/4/11, which accompanies this circular, contains amendments required to the Grey Book to ensure compliance with the Regulations. In order to coincide with the end of the settlement reference period the effective date of these changes is 1 July 2010.

Yours faithfully

SARAH MESSENGER
MATT WRACK
Joint Secretaries