



**DEVON &  
SOMERSET**  
FIRE & RESCUE SERVICE

# **Pensionable Pay**

## **A Practitioner's Experience of Decision Making**

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# Background & Context

- Changes in risk profiles within our communities
- Modernisation of the Fire & Rescue Service with new ways of working
- Expanding roles of Firefighters
- Responding to austerity measures and reduced budgets
- Grey Book provides a framework for nationally agreed terms & conditions
- Can determine terms and conditions through local agreement
- Additional Responsibility Allowance – *“temporary and non-pensionable”*
- Historical payments but changing pension regulations and impact of case law



# Additional Payments within DSFRS

- Training Allowance
- Area Manager Allowance
- Special Rescue Allowance/Additional Responsibility Allowance
- Day Crewing – Rent Allowance
- Dog Handler Allowance



# Timeline

- 2004 - NJC Scheme of Conditions of Service, 6<sup>th</sup> Edition
- 2008 - DSFRS Additional Responsibility Allowances Policy
- 2009 - Area Manager Allowance trial
- 2010 - Special Rescue Allowance
- 2011 - Norman v Cheshire Fire & Rescue Service
- 2013 - DCLG Consultation Response on Amendment Order to the FPS and NFPS included reference to Norman v Cheshire and that pensionable pay is for FRS determination



# Individual and Collective Challenges

- Trade Unions
- Senior Managers and staff near to retirement
- Retirees
- IDRPs and Grey Book s6C Negotiation Procedures



# Decisions Concerning Pensionable Pay

- Advice from DCLG Pensions Team in 2009 was that the AM Allowance should not be regarded as pensionable
- Legal landscape changed by Norman v Cheshire
- Application of “Blackburne Principles”
- Legal questions
  - Permanence
  - Payment for performing duties
  - Contractual agreement to non-pensionable
- Legal advice obtained on AM Allowance in 2016
- QC Opinion obtained in 2016





# Implementation of Pensionable Pay

- Pre and post July 2013 appointments in relation to the FPS Amendment Order 2013 (temporary promotions and rule B5C(5)(c) for Additional Pension Benefit)
- Payment of employee and employer arrears and use of the Limitation Act if agreed with the Home Office
- Approach accepted by Home Office as in accordance with informal working party in 2013 chaired by Sean Connor, Derbyshire FRS
- Discussions and collective agreement with FBU and FOA
- Resolution of IDRPs cases





# Implementation of Pensionable Pay

- Options for staff concerning arrears:
  - An immediate full payment of the arrears
  - Payment of arrears on a monthly basis up to a maximum of 6 years
  - Payment of arrears on a monthly basis until retirement, if this is for less than 6 years and any outstanding balance being deducted from the commutation lump sum payment at retirement.
  - Defer payment of arrears for up to 6 years with the outstanding balance being deducted from the commutation lump sum payment at retirement. If employment is continued then the total arrears will be payable in a single full payment at this 6 year point.





# Reflections and Conclusions

- Complexity of pension regulations and case law
- Problems of resolving retrospective payments
- Issue of employee contributions with no additional benefits
- With new case law, transparency and co-ordinated support from the LGA it is getting easier!



