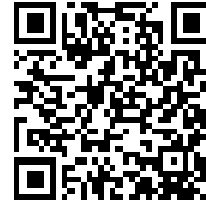


**To: All Members of the Consultation and Negotiation
Sub-Committee
(and any other Members who may wish to attend)**



**J. Henshaw
LLB (Hons)
Clerk to the Authority**

Tel: 0151 296 4000
Extn: 4112 Helen Peek

Your ref:

Our ref HP/NP

Date: 22 August 2014

Dear Sir/Madam,

You are invited to attend a meeting of the **CONSULTATION AND NEGOTIATION
SUB-COMMITTEE** to be held at **1.00 pm** on **TUESDAY, 2ND SEPTEMBER, 2014** in
the Temporary Conference Room at Merseyside Fire and Rescue Service
Headquarters, Bridle Road, Bootle.

Yours faithfully,

Clerk to the Authority

Encl.

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MERSEYSIDE FIRE AND RESCUE AUTHORITY
CONSULTATION AND NEGOTIATION SUB-COMMITTEE

2 SEPTEMBER 2014

AGENDA

Members

Jimmy Mahon (Chair)
Les Byrom
Roy Gladden
Linda Maloney
Tony Robertson

1. Preliminary Matters

Members are requested to consider the identification of:

- a) declarations of interest by individual Members in relation to any item of business on the Agenda
- b) any additional items of business which the Chair has determined should be considered as matters of urgency; and
- c) items of business which may require the exclusion of the press and public during consideration thereof because of the possibility of the disclosure of exempt information.

2. Minutes of Previous Meeting (Pages 1 - 2)

The Minutes of the Previous Meeting, held on 25th March 2014 are submitted for approval as a correct record and for signature by the committee chair.

3. Industrial Relations Update (Pages 3 - 38)

(CFO/090/14)

To consider Report CFO/090/14 of the Chief Fire Officer, concerning matters of negotiation and consultation currently being progressed with Representative Bodies since the last meeting of the Consultation & Negotiation Sub-Committee on 25th March 2014.

If any Members have queries, comments or require additional information relating to any item on the agenda please contact Committee Services and we will endeavour to provide the information you require for the meeting. Of course this does not affect the right of any Member to raise questions in the meeting itself but it may assist Members in their consideration of an item if additional information is available.

Refreshments

Any Members attending on Authority business straight from work or for long periods of time, and require a sandwich, please contact Democratic Services, prior to your arrival, for arrangements to be made.

MERSEYSIDE FIRE AND RESCUE AUTHORITY

CONSULTATION AND NEGOTIATION SUB-COMMITTEE

25 MARCH 2014

MINUTES

Present: Cllr Jimmy Mahon (Chair) Councillors Roy Gladden, Linda Maloney, Dave Hanratty and Pat Moloney

Also Present: Anthony Boyle (Independent Person), Kevin Hughes (Fire Brigades Union), Mark Rowe (Fire Brigades Union) and Tony Mooney (Unison)

Apologies of absence were received from: Cllr Les Byrom and Cllr Andrew Blackburn

1. Preliminary Matters

Members considered the identification of declarations of interest, any urgent additional items, and any business that may require the exclusion of the press and public.

Resolved that:

- a) no declarations of interest were made by individual Members in relation to any item of business on the Agenda
- b) no additional items of business to be considered as matters of urgency were determined by the Chair; and
- c) no items of business required the exclusion of the press and public during consideration thereof because of the possibility of the disclosure of exempt information.

2. Minutes of Previous Meeting

The minutes of the previous meeting of the Consultation and Negotiation Sub-Committee held 16th January 2014 were approved as a correct record and signed accordingly by the chair.

3. Industrial Relations Update

Members considered report CFO/025/14 of the Deputy Chief Fire Officer concerning matters of negotiation and consultation currently being progressed with Representative Bodies.

The Chief Fire Officer provided Members with an update on matters of consultation and negotiation. Duty systems, work life balance arrangements,

LLAR pension arrangements, and Conduct & Performance Policy were highlighted

It was further highlighted that the move to 12 hour shifts and the new work routine is subject to a 6-9 month review as agreed with Representative Bodies. Members were informed of the progress of revised Work Life Balance agreements.

Members were informed that the opinion of Counsel had been sought on the issue of how LLAR remuneration should be treated for pension purposes. This legal advice has come back and will be the subject of a future report to the Authority once the matter has been progressed further.

The Conduct & Performance Policy is undergoing consultation with representative bodies. This Policy and associated documents have been the subject of scrutiny by the Task and Finish Group for Review of HR Policies. A number of representative bodies have engaged with this consultation and are in the process of responding formally.

Resolved that

The progress being made:

- a. To maintain effective and constructive industrial relations with Representative Bodies be noted, and;
- b. To deliver the Authority's IRMP be noted.

Close

Date of next meeting to be confirmed at the Annual General Meeting

Signed: _____

Date: _____

MERSEYSIDE FIRE AND RESCUE AUTHORITY			
MEETING OF THE:	CONSULTATION AND NEGOTIATION SUB-COMMITTEE		
DATE:	2 SEPTEMBER 2014	REPORT NO:	CFO/090/14
PRESENTING OFFICER	CHIEF FIRE OFFICER		
RESPONSIBLE OFFICER:	NICK MERNOCK	REPORT AUTHOR:	MIKE CUMMINS
OFFICERS CONSULTED:	CHIEF FIRE OFFICER		
TITLE OF REPORT:	INDUSTRIAL RELATIONS UPDATE		

APPENDICES:	APPENDIX A:	FBU DISPUTE LETTER 30 JUNE 2014
	APPENDIX B:	CLERKS RESPONSE TO FBU DISPUTE LETTER OF 02 JULY 2014
	APPENDIX C:	COLLECTIVE AGREEMENT FOA
	APPENDIX D:	COLLECTIVE AGREEMENT FBU
	APPENDIX E:	WORK ROUTINE FIRE CONTROL
	APPENDIX F:	FBU LETTER 24 HOUR COLLECTIVE AGREEMENT
	APPENDIX G:	SERVICE RESPONSE TO FBU LETTER 24 HOUR COLLECTIVE AGREEMENT
	APPENDIX H:	VAH COLLECTIVE AGREEMENT (FOA)

Purpose of Report

1. To advise Members of the matters of negotiation and consultation currently being progressed with Representative Bodies since the last meeting of the Consultation & Negotiation Committee on 25th March 2014.

Recommendation

2. That Members note the progress being made to:
 - a. Maintain effective and constructive industrial relation with Representative Bodies, and
 - b. Deliver the Authority's IRMP and other key objectives

Introduction and Background

3. This report deals with matters of consultation and negotiation.

Service Instructions

4. Following the last meeting of the Consultation & Negotiation Committee (CNC) of 25th March 2014 the Joint Secretaries have successfully concluded consultation on a total of 121 new or amended Service Instructions. At the time of writing this report 11 Service Instructions remain in process. A sample of the range of areas in which agreements have been successfully reached through the formal consultation process are listed below to provide Members with an insight into the breadth of the work undertaken:
 - Divergence of Medical Opinion
 - Standards of Dress
 - Values Based Appraisal
 - Use of Social Media
 - Stress Risk Assessment
 - Driver Procedures
 - Mental Health & Well Being

Conduct & Performance Policy

5. At its Annual General Meeting of 26th June 2014 the Authority approved a range of revised and new HR policy documents listed below:-
 - Conduct & Capability Policy
 - Conduct Service Instruction
 - Capability Service Instruction
 - Absence and attendance Service Instruction
 - Firefighter Health & Fitness Service Instruction
 - Positive Mental Health & Well Being Service Instruction
 - Medical Discharge Procedure
6. This followed an extended period of consultation with Representative Bodies including the Fire Brigades Union (FBU), the Fire Officers Association (FOA), Unite and Unison. The Service has been able to reach agreement on the content of all the policy documents with all of the Representative Bodies consulted (apart from the FBU), prior to them being presented to the Authority for final approval at its meeting of 26th June 2014.
7. The FBU wrote to all Authority Members on the 24th June 2014 contending that the substantive matters covered in the policy documents are matters of negotiation not consultation and as such had not been agreed by the FBU. Further to this the FBU also contended that the Authority was acting in contravention of national and local agreements in agreeing to 'impose' the new and revised policies. The FBU raised a formal dispute on 30th June 2014 (see appendix A). The Service does not accept the FBU position in this regard and wrote to the FBU on 2nd July 2014 (see Appendix B) setting out its preliminary response to the FBU dispute.

8. It has now been agreed by the Service and the FBU to request NJC assistance in the form of conciliation. The outcome of conciliation is not binding on either party. The conciliation meeting has been scheduled for 10th and 11th September 2014. The outcome will be reported to CNC thereafter.

MACC Duty System

9. Following the recommendations of the Resolution Advisory Panel (RAP) at its meeting of 19th August 2013, the Service and the FBU agreed on an early introduction of the 12-hour shift duration for station based personnel recommended by Professor Brown (Chair RAP).
10. The shift duration was introduced on 3rd January 2014. It was also agreed at this time that staff at Fire Control (formerly MACC) would not move immediately onto 12-hour shifts, but instead would wait until the move to the new Joint Control Room at Service Headquarters planned for the autumn of 2014.
11. The rationale for the introduction of a 12-hour shift at Fire Control related primarily to fatigue considerations. The 12-hour shift model generates a lower HSE Fatigue Index risk score than the 9/15 model. Whilst other potential models offered greater efficiencies and lower fatigue index scores, the views of Fire Control staff were taken into consideration, particularly with regard to the 2-2-4 model which is popular with Fire Control staff.
12. Subsequently negotiations with regard to the introduction of 12-hour shifts, shift start/finish times and the implementation date for the revised duty system at Fire Control were progressed through the Joint Secretaries arrangements with the FBU and the FOA. Principal Managers were able to exercise a degree of flexibility over start/finish times to reflect the preferences of staff. The final decision on start/finish times was also informed by Snap Survey of Fire Control staff, which was undertaken by the Service to assess preferences over a range of potential start/finish times.
13. Negotiations between the FBU and the FOA took place over a number of months and were successfully concluded on 22nd July 2014. Collective agreements providing for the introduction of 12 hour shifts and start/finish times of 0700/1900 were signed with FOA and the FBU on (see Appendices C and D). A new work routine for Fire Control (see Appendix E) has also been put in place following the successful outcome of consultation with the FOA and the FBU.
14. Representative bodies have also been provided with assurances that the Authority will continue to deal with requests for work/life balance agreements from Fire Control staff on a case by case basis, mirroring the successful approach undertaken in relation to station based staff following the introduction of 12-hour shifts in January 2014.

Resilience Agreements

15. The principal method employed by the Authority for providing resilience during Contingency Situations (including Industrial action) is through its reliance on Resilience Contracts which place the holders under a contractual obligation to provide firefighting and rescue duties.
16. This mechanism has proved highly effective during the recent periods of Industrial Action by the FBU and has allowed the Authority to operate with a very high level of appliances staffed by highly trained 'wholetime' firefighters. This arrangement compares most very favourably with resilience arrangements in other areas of the United Kingdom with Merseyside operating at near normal levels of appliance availability.
17. The existing Resilience Contracts were principally designed for a continuous prolonged period of Industrial Action similar to the type of action historically taken by the FBU. However, the most recent strike action took place over an 8-day interval and involved multiple stoppages of a short duration, mostly of 1-hour and 2-hour intervals.
18. This has prompted a review of the existing Resilience Contract with the objective of constructing a model fit for purpose that reflects the broad range and type of Contingency Situations (including strike action of varying lengths and frequency) to which the Authority may be subject to in the future. A revised Resilience Contract has been prepared by the Service and subsequently agreed with the FOA. This revised contract will be offered to all those members of staff providing resilience.

National Industrial Action - Impact on Industrial Relations

19. Members will be cognisant of the impact of the national dispute between the Government and the FBU over pension reform, which has resulted in 46 instances of industrial action. Periods of industrial action have varied in length and pattern, with the most recent period of strike action taking place over a period of consecutive 8-days with multiple stoppages of short duration designed to test local resilience arrangements. This is a national dispute in which no role exists for the local parties to support a resolution. The parties locally have taken full account of this position and have striven to ensure that the national dispute does not unduly impact upon the conduct and maintenance of the excellent industrial relations that have been developed over recent years. Both parties have therefore committed to 'business as usual' with regard to the conduct of industrial relations on Merseyside and in particular to the on-going work of the Joint Secretaries.
20. However, further industrial action will result in the Authority reviewing its position on 'partial performance', although each instance of potential strike action will be dealt with on a case by case basis and upon its own merit. Should the Authority under certain circumstances refuse to accept 'partial performance' then this would inevitably place a strain on the good industrial relations that still pertain at this time despite a prolonged period of industrial action. The potential for a protracted national dispute and the commitment of the FBU nationally to action short of strike action including a potential overtime ban may impact

negatively on the ability of the Authority to introduce more efficient duty systems that rely upon Voluntary Additional Hours, as demanded by the overall financial position in which the Authority finds itself. Notwithstanding this the Service and the local Representative Bodies continue to work constructively to explore the options for achieving the most efficient iteration of the whole-time duty system achievable that will allow the Authority to maintain its commitment to a 'whole-time' duty system.

24-Hour Collective Agreement

21. The Authority signed a collective agreement with the FBU on 28th January 2013 to adopt the flexibility permitted under the Working Time Regulations to facilitate the operation of 24-hour shift working at locations determined by the Service and subject to staff volunteering to undertake shifts of this duration. On 1st July 2014 the FBU wrote to the Employers Joint Secretary (see appendix F) contending that the agreement contractually entitles staff to undertake 24-hour shifts.
22. The view of the Service is that the interpretation of the Collective Agreement is beyond reasonable doubt in that it does not place any obligation on the Service to meet requests from employees to work 24-hour shifts. The position of the Service remains that it will consider requests for 24-hour working where an operational rationale for doing so exists. In this respect dialogue in the Joint Secretaries continues over the possible introduction of Self-Managed Teams at agreed locations, linked to 24-hour working. The Service responded formally to the FBU on 4th July 2014 (see appendix G)
23. The FBU has requested that the issue of the interpretation of the 24-Hour Collective Agreement be referred to the National Joint Council for conciliation and have suggested that this could be undertaken as part of the already agreed round of conciliation meetings scheduled for 10th and 11th September 2014 with regard to the suite of Conduct and Performance policies disputed by the FBU. The Employers Joint Secretary has agreed to this request subject to time constraints related to the core business of the mediation meeting.

IMT Consultation

24. The Service has identified how changes in the provision of command support at operational incidents can release Watch Manager and Firefighters currently serving in the Incident Management Team (IMT) for redistribution to stations to improve appliance availability. SMG has recently approved a proposal to change the staffing of the IMT to complementary crewing in order to facilitate the release of personnel
25. Formal consultation over this proposal commenced with the FBU and the FOA on 13th June 2014 and was successfully concluded on 13th August 2014. The new agreed arrangements which will provide for the development of personnel at 3 stations in command support with Toxteth, Crosby and Whiston currently under consideration as locations. Complementary crewing will be introduced at one of these stations to provide a full crew of trained command support

personnel to any incident ground when needed, effectively replacing the full time staffed vehicle. The Service is currently reviewing the options for the replacement of current ICCU and spare IMT light vehicle with a more suitable replacement.

26. The conclusion of this agreement further reflects the commitment of the Service and the FBU locally to ensure that in so far as is reasonably practicable, the conduct of industrial relations on Merseyside and the business of the Authority is not unduly and negatively impacted upon by the national dispute over pension reform.

Self-Managed Teams

27. Members will recall from the presentations they received from the CFO at the recent Strategy Day, the key role that is played by the Self-Managed Team system in delivering the most efficient staffing arrangements possible by ensuring optimal crewing at any time and through reducing the cost of short term sickness absence. This system provides a very cost effective means of providing the 'wholetime' provision to which the Authority is committed as its preferred option for the delivery of operational response provision moving forward.
28. The Self-Managed Team system relies upon staff working additional shifts above their contractual commitment. Negotiations at the local level with the FBU over the possible introduction of Self-Managed Teams have been hampered as a consequence of the Action Short of Strike arising from the national pensions dispute. Notwithstanding this negotiations continue with local FBU Officials in anticipation of resolution of the national dispute in the due course.
29. During negotiations with the FOA over the introduction of Self-Managed Teams, local FOA Officials submitted a proposal for their Watch Manager members to work 24-hour shifts at Southport, Kirkdale and Toxteth. The position of the Service is that 24-hour working will be considered at locations where a strong operational rationale exists. The introduction of Self-Managed Teams in conjunction with 24-hour working satisfies this rationale as it facilitates the working of additional shifts through the compression of working time and provides for a significant and predictable reduction in the costs associated with short term sickness absence, albeit that 24-hour shifts generate a modest but acceptable increase in risk fatigue based upon the application of the HSE Risk Fatigue Index.
30. The extant 24 Hour Working collective agreement provides the contractual underpinning to facilitate 24-hour working on a Self-Managed Team basis and the FOA have also agreed to enter into a new Voluntary Additional Hours collective agreement with the Authority (see appendix H) to fully reflect the commitment of their members to work the additional shifts necessary to support the application of Self-Managed Team arrangements. Managers are currently in dialogue with FOA Officials regarding the details of implementation and have provided the FOA with confirmation that the new staffing arrangements will be

subject to a trial period to ensure that they deliver the anticipated benefits to the Authority.

Independent Review of Conditions of Service

31. The Government has appointed an independent reviewer, Adrian Thomas, to consider whether the present conditions of service present a barrier to the reform, improvement and efficiency of the fire and rescue service. Key considerations within the terms of reference are:
- Flexibility and responsiveness of the workforce, management practices, staffing and crewing arrangements.
 - People working longer
 - Collaboration and integration with other emergency services
 - Increased use of on call FF's
 - Clarity of process for fair recruitment and remuneration of Chief Fire Officers and fire officers
32. Whilst the current edition of the Grey Book is nearly ten years old, this review represents a clear challenge to management and trade unions, particularly as it is being considered by Government in conjunction with the findings of the Knight report. The Government questionnaire has to be completed by 19th September and further reports over the progress of this issue will be brought back to CNC.

Equality and Diversity Implications

33. There are no E&D implications arising from this report.

Staff Implications

34. Staff at Fire Control will move onto a 12-hr duty system with a start/finish time of 0700/1900, effective from 2nd September 2014. The new duty system is being introduced with the agreement of the relevant Representative Bodies.
35. Staff at a limited number of locations at the Watch Manager level will adopt a 24-hour working pattern based upon the application of Self-Managed Team principles.

Legal Implications

36. There are no legal implications arising out of this report. The Director of Law is consulted upon all matters arising out of the work of Joint Secretaries as is appropriate.

Financial Implications & Value for Money

37. The adoption of the Self-Managed Team arrangements amongst Watch Managers at a number of locations will in all likelihood, subject to historical precedent, significantly result in a reduction in short term sickness absence amongst this cohort. Any savings delivered in the short term will be reinvested to ensure appliance availability through additional voluntary hours.

Risk Management, Health & Safety, and Environmental Implications

38. The 12-hour shift model generates a lower HSE Fatigue Index risk scores than the 9/15 model.

Contribution to Our Mission: *Safer Stronger Communities – Safe Effective Firefighters*

39. Good industrial relations contribute to preventing disruption and distraction in the workplace thereby supporting the Authority in its mission to ensure *Safer Stronger Communities and Safe Effective Firefighters*.

BACKGROUND PAPERS

CFO/025/14 This report follows on from the CNC report of 25th March 2014.

GLOSSARY OF TERMS

FOA	Fire Officers Association
FBU	Fire Brigades Unions
NJC	National Joint Council
SMG	Strategic Management Group
SMT	Self-Managed Team
IMT	Incident Management Team
VAH	Voluntary Additional Hours
CNC	Consultation & Negotiation Sub-Committee
CFO	Chief Fire Officer



MERSEYSIDE FIRE BRIGADES UNION

MERSEYSIDE FIRE SERVICE. MACC, DERBY ROAD, LIVERPOOL, L20 8EH.

PHONE 0151 296 4118

Mr Nick Mernock
Employers Joint Secretary
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Bridle Road
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Mark Rowe
Brigade Secretary
FBU Office
MACC
46 Derby Road
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Liverpool
L20 8EH

Date: 30th June 2014

FBU Registered Dispute: Imposed Policies

Dear Mr Mernock,

You will be aware that the Fire Brigades Union (FBU) has grave concerns regarding the decision taken by the Merseyside Fire and Rescue Authority (MF&RA) at its Annual General Meeting of the 26th June 2014, to unilaterally impose a suite of policies that impact upon our members.

I confirm that the FBU does not accept the imposition of these policies and as such I write to formally register a dispute in line with the nationally and locally agreed procedures.

The dispute plainly refers to a clear breach of the national scheme of conditions of service, a clear breach of the local conditions of service, clear breaches of Collective Agreements and a potential breach of our member's contract of employment.

You will recall I advised the elected members of MF&RA at the AGM of this position and despite one elected member seeking clarification of this matter via the Chair which was not satisfactorily provided, the Service still recommended that the suite of policies be imposed, a recommendation that the Authority accepted.

The fundamental starting point in relation to this issue are the arrangements that were in place for matters regarding conduct, capability and discipline which were as a result of significant negotiations both locally and nationally and which provided for the agreed procedures.

You will no doubt be aware those agreements, policies and procedures are contained within the National Joint Council for Local Authority Fire and Rescue Services Scheme of Conditions of Service (6th Edition) 2004, updated 2009 (the Grey Book) and supplemented by local Collective Agreements.

Collective Agreements are contractual by virtue of paragraph 1 of our members contract of employment; Service Instructions are contractual for the same reason and accepted by MF&RS as such along with them being long established practises which are clearly certain, notorious and reasonable.

Regrettably, it is the case that MF&RA decided at the AGM, as a result of Service recommendation, to unilaterally impose a number of Policies and Service Instructions and as such rendered a number of extant and jointly agreed Procedures and Service Instructions immediately redundant.

The FBU strongly contend that the procedures that have been unilaterally dismantled by the employer are contractual and are binding on both parties. Those imposed policies are:

- Conduct and Capability Policy
- Absence and Attendance Service Instruction
- Capability Service Instruction
- Conduct (Discipline) Service Instruction
- Firefighter Health and Fitness Service Instruction
- Medical Discharge Procedure
- Positive Mental Health and Wellbeing - Service Instruction

The details of the dispute are as follows:

1. MF&RA have manifestly breached the nationally and locally agreed negotiation procedures.

Paragraph 11 of CFO/076/14 declares that the policies in draft document form were presented to the FBU for consultation, paragraph 13 states that the Group considered the outcomes of consultation and agreed their recommendations.

You are aware that policies and procedures such as these are matters of negotiation rather than consultation and require the agreement of the FBU.

It has previously been the case that similar and relevant negotiations were jointly undertaken with the previous Principal Management team and an agreed position reached. There is no agreement with the FBU on the imposed Policies and it is deeply regrettable that you could not maintain the previous management team's position on this issue.

Conduct and Capability Policy, Conduct Service Instruction, Capability Service Instruction.

Section 6, Part B of the Grey Book provides for Conduct, Capability and Discipline procedures, the FBU and MF&RA have improved upon those national procedures via Collective Agreements, notably;

- the Collective Agreement signed by both parties on the 14th January 2005 which amends the discipline and grievance procedures specifically by providing for a Principal Officer as being the role with delegated authority to dismiss an employee.
- The Collective Agreement signed by both parties 7th June 2005 regarding dismissal of an employee and possible Employment Tribunal orders re-instatement, after the Authority has considered the appeal against dismissal. The agreement confirms appeals in relation to dismissal will be undertaken by the Authority.
- The Collective Agreement reached January 2005 confirming that the Authority would be the body that considers appeals against dismissal.

The National Joint Council, of which you are aware MF&RA is a constituent member, promulgated NJC/08/07 'Industrial Relations Protocol' which is supplementary to the model consultation and negotiation procedures contained in Section 6 of the Scheme and Conditions of Service (Grey Book) and as such are themselves contractual matters. NJC/08/07 states that the definition of matters of negotiation rather than those of consultation as:

'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.'

Accordingly, it is perfectly clear that the suite of policies you seek to impose are matters of contract and require agreement. To endorse and impose the Policies is the clearest breach of all relevant procedures and a breach of our members' contract of employment.

You may also be aware, I am sure, that your colleagues within Greater Manchester Fire and Rescue Service (GMF&RS) have the same issue in relation to GMF&RA wishing to amend an existing capability policy but have sent the matter to the NJC Joint Secretariat to determine whether the matter is one of negotiation or consultation. Again it is regrettable that you feel you can adopt a much more aggressive position, breaching rather than utilising agreed procedures and clearly damaging Industrial Relations.

Further, the locally agreed negotiation and consultation procedures are also clear in this matter in that they state

'Negotiation Procedure

- *This procedure shall be used for all matters that are the subject of collective negotiation and agreement between the fire and rescue authority and recognised trade unions. The objective of the procedure is to resolve issues jointly. Individual issues should be dealt with through the grievance procedure.'*

The procedures also state

- *'Notwithstanding these formal procedures each party should give early notification to the other party that an issue has arisen and maintain a continuous informal dialogue and exchange of information on relevant issues.'*

It is regrettable you have clearly breached this condition in that you did not comply with this provision which is intended to resolve matters before they escalate, as this issue clearly now has.

As aforementioned the jointly agreed national Joint Protocol for Good Industrial Relations in the Fire and Rescue Service, relevant to this matter, states

*'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 i.e. industrial action or imposition of change.**' (FBU emphasis)*

MF&RA are in clear breach of this condition of service.

Furthermore, the current Service Instruction regarding discipline states that *'This procedure has the status of a collective agreement with the representative bodies and as such is deemed as contractual'*.

Reference has been made to the Authority Report CFO/15/05 which contains the statement that the scheme of delegation can be revoked by the Authority. The FBU can confirm that we never agreed to that clause and the reference point is plainly the Collective Agreement signed by both the Brigade Secretary and the Assistant Chief Fire Officer at the time, acting in their capacity of Joint Secretaries, dated 14th January 2005 and is attached as appendix 1.

There is no mention of any revocation clause in that Collective Agreement and it is clear that the Collective Agreement refers to only the ACFO, DCFO or CFO having the ability to dismiss under the procedure. Regardless of the revocation clause, the notion of which the FBU rejects, the Proposal you have imposed dismantles this Collective Agreement by inserting Area Managers as a Role who can now dismiss.

It is concerning that you have taken this step in the knowledge that this issue has previously been a matter of dispute between the parties and has been subject to NJC Joint Secretary intervention. The matter was not resolved at that time and the procedures, as you are aware, requires you to refer the matter on to either ACAS and/or the NJC Resolution Advisory Panel (which shall comprise an Independent Chair and the Joint Secretaries), you have failed to do and imposed in breach of the agreed procedures.

In relation to the imposed Capability Policy, this Policy plainly breaches the current procedures in the clearest manner possible. The new Policy, imposed on our members, completely alters the manner in which issues of capability have previously been dealt with under the jointly agreed and current disciplinary procedures. Those procedures entirely reflect the national Grey Book procedures which are covered in Section 6, Part B entitled 'Conduct, Capability and Discipline' (*FBU emphasis*).

The proposal seeks to move away from the national procedures entirely and the Union has to ask the question why that is, particularly given the current Trade Dispute and the link fitness has with capability.

Additionally, the Capability Procedure removes key aspects of the agreed 'Conduct, Capability and Discipline Procedure' in that proper investigation, hearing and appeal with sanctions, understood and agreed by all parties, is removed and replaced by improvement notices, resulting in dismissal, demotion or redeployment; there is no ability for a redeployment sanction or improvement notice sanction within the national agreement.

It is a fundamental issue that procedures that result in the dismissal of firefighters are a matter of contract; they are contractually binding on both parties and therefore are matters of negotiation. I refer you again to the NJC Industrial Relations Protocol which you are acting in breach of.

Medical Discharge Policy.

In relation to the Medical Discharge Procedure, the new imposed Policy dismantles the Collective Agreement reached between the Authority and the FBU entitled 'Retirement Policy and Reengagement Policy'. This Collective Agreement was enshrined into Authority Policy via Authority Report CFO/45/07 on the 20th March 2007. There has been no agreement with the FBU to amend this Policy.

Again this is the clearest breach of the nationally and locally agreed procedures and the Union is unsure why Collective Agreements reached after extensive negotiations are presently being rejected in such a manner.

2. MF&RA have manifestly breached FBU members contract of employment.

You are aware that discipline procedures are a specific provision within members Statement of Particulars. Your actions have breached member's contract of employment.

3. MF&RA are in Material Breach of Relevant Health and Safety Legislation.

You sought MF&RA to impose a Firefighter Health and Fitness Policy; I can confirm that the Union does not agree this Policy in its current form.

You may also be aware that national negotiations are ongoing in relation to this issue within the NJC and which involves elements of the current Trade Dispute, it is utterly precipitate for MF&RA to attempt to impose this issue at this stage and completely undermines the benefits of a properly negotiated Occupational Fitness Policy.

You advised MF&RA that the Firefighter Fitness and Health Policy reflects advice recommended by the Chief Fire Officers Association (CFOA) - Firefit steering Group. Regrettably that is not the case and the FBU refers you to the report entitled 'Enhancing the Health, Fitness and Performance of UK Firefighters - An Interim Report' commissioned by CFOA, I understand you and other MF&RS colleagues are members of CFOA.

The report as stated is 'interim' which advises there is a great deal more work and consultation to undertake. It makes important statements which contradict the Policy you recommended MF&RA impose, including significant safety critical issues.

For example the Fitness Policy as it stands suggests that firefighters with a fitness level of VO2 max standard of between 35 and 42 ml.kg-1.min-1, will remain operationally available but be subject to a fitness/weight improvement regime.

CFOA's reports suggest that may potentially be dangerous and states

'The present study indicates that firefighters with an aerobic capacity below an occupational fitness standard of 42.3 ml.kg-1.min-1 would not be guaranteed to be safe and effective in their ability to complete necessary roles within their occupation. Although this does not greatly differ from the current fitness standard of 42 ml.kg-1.min-1, it does indicate that the lower VO2 max standard of 35 ml.kg-1.min-1 for continuation of work with remedial training amongst operational firefighters is potentially unsafe for the majority of firefighters.'

As I understand it the CFOA report was concluded in March 2014 and the Union presumes was provided to CFOA members for information and consideration. It is therefore safe to presume that MF&RS is aware of the report's findings and in the event that CFOA members did not become aware of the findings in March 2014, you clearly are aware now.

The fundamental issue seems to be that the CFOA commissioned report has indicated a risk to firefighters which can only be considered now as foreseeable. MF&RS is then required under Regulation 3 of the Management of Health and Safety at Work Regulations 1999 to undertake a risk assessment to assess the risk to employees and to implement control measures if risk is identified.

You have failed to provide the FBU with a risk assessment as required; accordingly you have failed to provide the Union the opportunity for statutory consultation on the risk assessment. Regrettably you may potentially be placing employees at increased risk in disregarding the FBU's stated concerns on the Fitness Policy and standing contrary to the interim findings of the CFOA report.

You will be aware that the report also states that

'It is recommended that we now embark on a period of consultation, starting with the Stakeholder and Technical Panels established, with the aim of deriving agreed minimum acceptable standards and test protocols.'

In order for the implementation of empirically-informed fitness standard to be successful in improving and maintaining the health and fitness of UK firefighters there must be some national agreement on the implementation and governance of fitness testing and standards. Furthermore, consideration should be given to the necessary resources to ensure employees are able to meet recommended criteria.'

Your actions in recommending the Fitness Policy in the manner you have are clearly precipitate and contradict your own Associations guidance.

4. Failed to give Due Regard to the Impact on Equality via an Equality Impact Assessment (EIA).

The FBU believes the Fitness Policy in its current form is potentially detrimental to some protected conducts as laid out in the Equality Act 2010 which should have been assessed and included in the Equality Impact Assessment (EIA) required to be undertaken for such a Policy.

The Equality and Diversity Implications section of the Authority Report advised members that all proposed policies and procedures have been subject to an EIA attached as appendix I. This is not the case. You will see from that EIA that it only assesses the impact on equality in relation to the Conduct and the Capability Policy, there has been no EIA undertaken for the other policies as required.

As such the EIA has not been provided the Union; simply put it is clear that MF&RS has not undertaken an EIA on this Policy which it is required to do.

Given all aforementioned points the FBU requires you to progress the dispute in line with the agreed dispute resolution machinery, I would suggest in the first instance that the NJC Joint Secretaries are contacted as a matter of urgency. I can confirm that I have contacted the employee's side of the NJC Joint Secretariat for expediency.

I would also ask you to confirm that due to the registration of this dispute that you will comply with Section 6, Part C, Paragraph 18 in that while an issue is subject to discussion/resolution under this procedure neither side will seek to take any collective action or introduce change, a condition repeated in the locally agreed procedures also. That would necessitate that the Policies agreed by the Authority be placed in abeyance pending dispute resolution and I would be grateful for your confirmation on that point.

I look forward to your response and if you require any further information please do not hesitate to contact me.

Yours sincerely

Mark Rowe
Brigade Secretary

cc: Dave Hanratty
Janet Henshaw
Matt Wrack
John McGhee
Kevin Brown
Les Skarratts

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Janet Henshaw
Clerk to the Authority
Merseyside Fire & Rescue Authority
Legal Services Department,
Fire Service Headquarters,
Bridle Road,
Bootle,
Merseyside
L30 4YD

Telephone: 0151 296 4301

Fax: **0151 296 4141**

Web Site: **www.merseyfire.gov.uk**

Your ref:

Our ref: JH/DEP/1

Date: 2nd July 2014

Dear Mr Rowe

Employment Policies

Thank you for your letter of 30th June 2014.

Firstly I cannot accept a dispute in relation to the discipline policy/procedures and management levels as both parties jointly agreed to seek external assistance in April 2013 on this issue. A meeting with the national joint secretaries took place but no outcome was attained from this process and the matter was referred back for local determination. On that basis I consider that in relation to this matter any recourse to external assistance has been exhausted.

In relation to your concerns regarding the decision of the Authority taken over the remaining Policies at the Annual General Meeting on 26th June 2014 I offer the following response.

As you are well aware a consultation process, in accordance with the ACAS Code of Practice and Grey Book, which the FBU and other representative bodies were fully

engaged in, was undertaken over a period of 12 weeks (extended from 8 weeks on request).

The consultation process commenced on 4th February 2014 during which time you had numerous opportunities to raise these or any other concerns prior to your letter to members of the Authority. These opportunities include:

- i. An extension to the above consultation of a further 4 weeks, giving a total of 12 weeks consultation period.

Where the majority of changes proposed by the representative bodies, including the FBU, were accepted with the exception of discipline management levels.

- ii. This was followed by a referral to the Elected Member Task & Finish Group, including all representative body comments for ratification and recommendation to the full Authority.
- iii. Referral on to the Performance & Scrutiny Committee, for which you received the Agenda and invite via email but did not attend (again including all representative bodies' comments).

Despite these numerous opportunities you chose to raise your concerns by letter directly to Elected Members on the night before the Authority AGM. This is a totally unacceptable way to conduct business and is clearly outwith the NJC/08/07 Industrial Relations Protocol, which encourages a joint commitment to a 'no surprises' culture and a commitment to early discussion of emerging issues, neither of which occurred on this occasion.

The Authority has followed the correct procedures throughout and has operated in a transparent manner with 'no surprises'. This late stage approach cannot be procedurally sufficient and is beyond any measure of good faith.

That said, and in the interest of maintaining good industrial relations I am, as far as the other Policies and Instructions are concerned, prepared to refer these to the National Joint Secretaries. However, you must firstly inform me as to the precise issues you wish to be discussed so that all parties are clear at the outset, given that all of the other representative bodies involved in the process have welcomed and subsequently agreed all of the Policies.

A handwritten signature in cursive script, appearing to read "Janet Henshaw".

Janet Henshaw
Clerk to The Authority

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COLLECTIVE AGREEMENT VOLUNTARY ADDITIONAL HOURS

Dated – 15th August 2014

1. Parties

- 1.1 Merseyside Fire & Rescue Authority of Fire Service HQ, Bridle Road, Bootle, Merseyside, L30 4YD
- 1.2 The Fire Officers Association of London Road, Moreton in Marsh, Gloucester, GL56 0OH.

2. Definitions

In this agreement:

- 2.1 “The Authority” means Merseyside Fire & Rescue Authority.
- 2.2 “The FOA” means the Fire Officers Association.
- 2.3 “Voluntary additional hours” means hours worked over and above an individual’s contractual commitment under his/her primary contract.

3. Background

- 3.1 This collective agreement sets out the arrangements in place for an employee providing voluntary additional hours to the Authority to meet its operational requirements.
- 3.2 Existing overtime arrangements relating to casual (change of shift) overtime, public holiday payments and recall to duty are unaffected and arrangements in place for those circumstances remain extant.
- 3.3 All employees' who are willing to volunteer to work voluntary additional hours under the terms of this agreement will complete the availability request form which is currently circulated monthly by TRM via email.
- 3.4 Employees who volunteer to work voluntary additional hours at short notice will be registered with the Service and may be contacted from time to time at such short notice.

4. Status of Agreement

- 4.1 There is no obligation to offer work and no obligation for the employee to accept work as a consequence of this agreement.
- 4.2 Nothing in this agreement constitutes a Contract of Employment.
- 4.3 Employees' undertaking voluntary additional hours under the terms of this agreement will be accountable to the Line Manager they are working under.

5. Pay

- 5.1 Employees' undertaking work under the Voluntary Additional Hours Agreement will receive payment commensurate with the role being carried out at that time.
- 5.2 Voluntary additional hours will in the first instance be offered on a role to role basis, subject to acceptance by those employees.
- 5.3 If operational requirements cannot be met on the basis detailed in paragraph 5.2 Voluntary Additional Hours will be offered to any member of staff qualified to undertake the role for which voluntary additional hours are offered.
- 5.4 Payments for additional voluntary hours will be made at flat rate.

6. Hours of Work

- 6.1 There are no regular or fixed hours of work or shifts for employees undertaking voluntary additional hours. The employee will provide voluntary additional hours on an "as and when" basis, as required to meet the needs of the Authority from time to time and as agreed by the employee.
- 6.2 Time and resource management will monitor the allocation of voluntary additional hours to employees to identify when individuals work excessive hours.

7. Absences

- 7.1 If an employee who has committed to undertaking voluntary additional hours for a defined shift or period then withdraws that commitment, then he/she should notify Time & Resource Management (TRM) or the designated local staffing officer as soon as possible. Where practicable this should be not less than 24 hours prior to the start of the shift.

8. Termination of Registration

8.1 An employee is required to notify TRM in writing if they are no longer available to undertake voluntary additional hours. Once notified TRM will remove them from the register.

9. Access to Voluntary Additional Hours

9.1 Both parties are committed to ensuring equality of access to voluntary additional hours under this agreement.

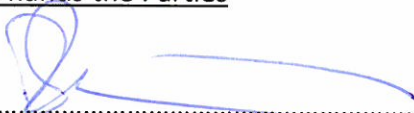
10. Fire Kit & Personal PPE

10.1 Employees undertaking Voluntary Additional Hours (VAH) will be responsible for moving their Fire Kit/PPE to the station location where VAH is being undertaken and its return to their home station following the completion of any period(s) of VAH.

11. Termination Or Amendment

11.1 This agreement may be terminated or amended at any time by written agreement between both the parties.

AS WITNESS the hands the Parties

SIGNED BY.....

For and behalf of the Fire Officers Association

SIGNED BY.....

For and behalf of the Authority

**FIRE CONTROL COLLECTIVE AGREEMENT
12-HR DUTY SYSTEM
FIRE BRIGADES UNION**

Dated – 1st August 2014

1. Parties

1.1 Merseyside Fire & Rescue Authority of Fire Service HQ, Bridle Road, Bootle, Merseyside, L30 4YD.

1.2 The Fire Brigades Union of FBU Office, 46 Derby Road, Bootle, Liverpool L20 8EH.

2. Definitions

In this agreement:

2.1 “The Authority” means Merseyside Fire & Rescue Authority.

2.2 “The “FBU” means the Fire Brigades Union.

2.3 “The Grey Book” means the National Joint Council for Local Authority Fire and Rescue Services Scheme of Conditions 6th Edition as amended or replaced and as for the time being in force.

2.4 “The Operational Duty System” means the duty system specified in Paragraphs 5 to 7 below.

2.5 “Employee” means an individual employed by the Authority under Grey Book terms and conditions.

3. Existing Contractual Arrangements

3.1 Unless explicitly stated in this collective agreement, all other terms and conditions of employment applicable to employees under the Grey Book are unaffected.

4. Agreement

4.1 Fire Control staff conditioned to Grey Book terms and conditions, will undertake the duty system detailed in paragraphs 5 to 7 as their de-fault duty system with effect from the 2nd September 2014.

5 Duty System

5.1 The day shift shall comprise of a 12 hour shift commencing at 0700 and ending 1900.

5.2 The night shift shall comprise of a 12 hour shift commencing at 1900 and ending 0700.

6. Working Pattern

- 6.1 Two day shifts will be followed consecutively by two night shifts, followed by 4-days free from duty.
- 6.2 Subject to the agreement of the Authority individuals may elect to self-roster.

7. Breaks

- 7.1 Breaks will be taken in line with the extant work routine, as modified from time to time by the Service in accordance with Grey Book consultation requirements.
- 7.2 Breaks will be scheduled by local managers to reflect operational and workload demands.

8. Status of Agreement

- 8.1 Both parties to this collective agreement intend that it is a legally enforceable contract.

9. Termination Or Amendment

- 9.1 This agreement may be terminated or amended at any time by written agreement between both the parties.

SIGNED BY.....
(Mark Rowe)

For and behalf of the Fire Brigades Union

SIGNED BY.....
(Nick Mernock)

For and behalf of the Authority



Service Instruction XXXX
Fire Control Breaks & Stand Down

“An Excellent Authority”

Document Control

Description and Purpose

This document is intended to give guidance to uniformed personnel about the uniform to be worn by uniformed members of Merseyside Fire & Rescue Service, and the times it shall be worn.

Active date	Review date	Author	Editor	Publisher
		GM Glynis Lomax	GM Paul Hitchen	Sue Coker
Permanent	<input checked="" type="checkbox"/>	Temporary	If temporary, review date must be 3 months or less.	

Amendment History

Version	Date	Reasons for Change	Amended by
1.0	15/07/14		

Risk Assessment (if applicable)

Date Completed	Review Date	Assessed by	Document location	Verified by(H&S)

Equalities Impact Assessment

Initial	Full	Date	Reviewed by	Document location

Civil Contingencies Impact Assessment (if applicable)

Date	Assessed by	Document location

Related Documents

Doc. Type	Ref. No.	Title	Document location

Contact

Department	Email	Telephone ext.
Operational Response	operationalresponsed@merseyfire.gov.uk	0151 296 4919

Target audience

All MFS		Ops Crews		Fire safety		Community FS		
Principal officers		Senior officers		Non uniformed		Fire Control	<input checked="" type="checkbox"/>	

Relevant legislation (if any)

Introduction

This Service Instruction sets out the management arrangement for staff breaks and stand down at Fire Control. These arrangements will be managed locally and may be varied to reflect staffing levels and variations in the operational demands placed on Fire Control at any time.

Day Shift 0700hrs – 1900hrs

15-minute break between 0900hrs and 1000hrs

1-hour break between 1130hrs and 1430hrs

30-minute break between 1630hrs and 1800hrs

Night Shift 1900hrs – 0700hrs

15-minute break between 2000hrs and 2100hrs

1-hour break between 2100hrs and 0100hrs

15-minute break between 0600hrs and 0700hrs

Stand Down Period

A stand down period between 0200hrs and 0600hrs

All breaks and stand downs will be managed at the Watch Manager's discretion.



Nick Mernock
Employers Joint Secretary
Fire Service Headquarters
Bridle Road
Bootle
Merseyside
L30 4YD

Mark Rowe
Employees Joint Secretary
FBU Office
MACC
46 Derby Road
Bootle
Liverpool
L20 8EH

1st July 2014

Dear Nick,

24 Hour Working Collective Agreement

I write further to our recent discussions within the Joint Secretaries forum, in relation to the 24 hour working Collective Agreement signed by both parties after the NJC conciliation meeting, 29th November 2012.

Through the Joint Secretaries discussions it is apparent that Merseyside Fire and Rescue Service's stated position is that 24 hour working will not be authorised without an 'operational rational'.

The FBU believe this to be a reinterpretation of the Collective Agreement, an agreement that the FBU signed in good faith. It simply cannot be the case that either of the parties within a Collective Agreement can arbitrarily redefine the intent of that agreement.

It is our belief that the 24 hour collective agreement is clear in its definition and intent, this is captured within the agreement which we believe to be explicit and allows for no area of confusion:

8. ***The voluntary arrangement***

- 8.1 *Employees may volunteer to work periods which include continuous working for up to 24 hours. This should be on the basis of a day shift followed by a night shift and within the core hours of average 42 hours per week over an 8-week reference period. Individuals may be requested to work more than their contractual hours.*
- 8.2 *Employees may withdraw completely from this arrangement by providing a minimum period of 28 days notice in writing, or for those on the self-rostering system a minimum period of 28 days notice or until the end of the current 8-week reference period whichever is the greater.*

As you are aware Collective Agreements are contractual by virtue of paragraph 1 of our members' contract of employment.

There has previously been no 'operational rationale' applied to 24 hour working when this system was utilised at:

- Kensington community fire station (Watch Managers and Firefighters)
- Southport community fire station (Watch Managers)
- Kirkdale community fire station (Watch Managers and Firefighters)
- Firefighters working an agreed flexible working pattern
- Croxteth community fire station (Watch Managers and Firefighters)
- Incident Management Unit

As you can see this system of work has been widely utilised by MF&RS and is, I believe, now only available at one service location.

The FBU have been approached by our members from a number of fire stations and also individuals who wish to utilise the 24 hour Collective Agreement without having to undertake a secondary contract as an 'operational rationale'. As the Collective Agreement allows for this I would be grateful if you could inform me as to whether this will be authorised or not and if not I request an explanation as to why not.

For clarity, I believe a refusal of this request to be a breach of the 24 hour working Collective Agreement.

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

Yours sincerely

Mark Rowe
Brigade Secretary

Mr M. Rowe
Brigade Secretary
Fire Brigades Union
FBU Office
Fire Control
46 Derby Road
Bootle
Liverpool L20 8EH

Nick Mernock
Director of P.O.D
Fire Service Headquarters
Bridle Road,
Bootle,
Merseyside
L30 4YD

Telephone: 0151 296 4320

Fax: **0151 296 4120**

Web Site: **www.merseyfire.gov.uk**

Your ref:

Our ref: NM/MC

Date: 4th July 2014

Dear Mark,

24- Hour Working Collective Agreement

Thank you for your letter of 1st July 2014 concerning the extant collective agreement for 24-hour working.

I share your view that the meaning of the collective agreement is clear but not your interpretation of that meaning. The provision of this agreement is required under the Working Time Regulations if the Authority elects to offer 24-hour working arrangements to employees where it considers this to be appropriate i.e. where an operational rationale exists for doing so. However, the agreement does not place an obligation on the Authority to meet requests from employees for 24-hour working arrangements and on this basis my view is clear - there has been no breach of the collective agreement.

The position of the Authority in relation to 24-hour working remains the same that it will consider such requests where an operational rationale exists for doing so. I note that discussions continue at Joint Secretaries level with regard to a proposal from the FBU to seek the introduction of 24-hour working at a number of stations subject to a requirement of the Authority that any duty system is based on the self-managed

teams concept being adopted at these locations. I believe the best option at this time therefore, is for both parties to continue this ongoing and constructive dialogue.

Yours sincerely,

Nick Mernock
Director People & Organisational Development

Copies to:

Mike Cummins

COLLECTIVE AGREEMENT VOLUNTARY ADDITIONAL HOURS

Dated – 15th August 2014

1. Parties

- 1.1 Merseyside Fire & Rescue Authority of Fire Service HQ, Bridle Road, Bootle, Merseyside, L30 4YD
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5. Pay

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- 5.4 Payments for additional voluntary hours will be made at flat rate.

6. Hours of Work

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9. Access to Voluntary Additional Hours

9.1 Both parties are committed to ensuring equality of access to voluntary additional hours under this agreement.

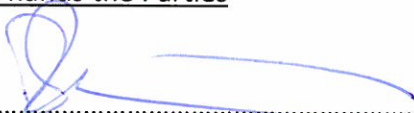
10. Fire Kit & Personal PPE

10.1 Employees undertaking Voluntary Additional Hours (VAH) will be responsible for moving their Fire Kit/PPE to the station location where VAH is being undertaken and its return to their home station following the completion of any period(s) of VAH.

11. Termination Or Amendment

11.1 This agreement may be terminated or amended at any time by written agreement between both the parties.

AS WITNESS the hands the Parties

SIGNED BY.....

For and behalf of the Fire Officers Association

SIGNED BY.....

For and behalf of the Authority

