

FIREFIGHTERS' PENSION COMMITTEE

NOTE OF THE 29th MEETING OF THE FIREFIGHTERS' PENSION COMMITTEE HELD ON 26th FEBRUARY 2009 AT ELAND HOUSE, BRESSENDEN PLACE, LONDON

(A list of the attendees is attached in Annex A)

1. Introduction

1.1 The Chairman welcomed everyone to the meeting.

2. Minutes of the 28th FPC meeting

2.1 The minutes of the 28th FPC meeting were agreed.

3. Matters arising from the 28th FPC meeting - FPC(09)1

3.1 The Chairman introduced paper FPC(09)1 - 'Matters arising from the 28th FPC meeting'.

Consolidation of the FPS 1992

3.2 Members were advised that a copy of the latest draft table of proposed amendments was attached at Annex A of the Committee paper. The Chairman explained that the table was an update to the proposed amendments that had been outlined in Committee paper FPC(08)2 which was issued to the FPC in April 2008 for comment.

3.3 It was noted that Sean Starbuck had circulated to members of the Committee his letter of 25th February to the Chairman outlining the FBU's opposition to the proposed amendments.

[Secretary's note: A copy of Sean Starbuck's letter has been attached at Annex B]

3.4 A note entitled "Proposed Table of Rule Amendments – Rule K4" prepared by Des Prichard of APFO was issued to members.

[Secretary's note: A copy of APFO's note is attached at Annex C.]

3.5 Des Prichard made reference to the HM Treasury's guidance on abatement which was attached at Annex 1 of paper FPC(09)1, he said that it was clear that the current provisions of the FPS 1992 required FRAs to apply abatement to any member's pension who, after retirement, was re-employed under 'Grey book' or 'Gold book' conditions of service. It had always been APFO's understanding that where a retired firefighter was successful in securing further employment within the FRS through open competition and under terms other than the Grey book or Gold book conditions of service, abatement would not be applied to the member's pension and that the re-employment would attract the full remuneration package. He

maintained that there was a clear business case for not applying abatement in these circumstances in that there was no associated additional cost to the public purse and that it enabled FRAs to attract applications from the most appropriately skilled/qualified candidates. He confirmed that APFO opposed the current proposal to amend Rule K4 of the FPS on the grounds that it would be certain to dissuade the best candidates from applying for those vacancies within the FRS that would be subject to abatement. Glyn Morgan of FOA supported this view.

- 3.6 The Chairman explained that the intention of the proposed amendment to Rule K4 was to clarify the position with regard to HM Treasury's guidance on the application of abatement. Whilst he accepted that the position of FRA employees was unusual in that they may be employed under quite different terms and conditions at different times (i.e. Gold, Grey or Green Book), there was one employer. He said that the FPS 1992 was an unfunded scheme and the current financing arrangements for firefighter pensions meant that where the income from contributions was not sufficient to cover costs any deficits were underwritten by central government. It was unreasonable to expect the taxpayer to subsidise a FRA in this way.
- 3.7 Ivan Walker said that inter-service abatement was not a statutory requirement and from his enquiries of other local authority unions he was not aware of any instances where it was being applied by any public sector employers. The Chairman responded by saying that inter-service abatement should be applied by all public sector employers in cases where a retired public sector worker in receipt of a public sector pension had been re-employed; where the current employer was unable to abate a member's pension, HM Treasury expected consideration to be given to abating the employee's pay. This should be part of the terms and conditions of the employment.
- 3.8 James Dalgleish said that members of the Local Government Pension Scheme would have to accept the application of abatement to their pension and LFEPA applied HM Treasury requirements..
- 3.9 Fred Walker said that whilst he appreciated both sides of the argument there was a real need to recognise the significance of the public's perception on abatement. If abatement was not applied to the pensions of retired firefighters who were subsequently re-employed within the FRS, the public were likely to find this unacceptable.
- 3.10 Ian Hayton said that there was a need to be clear as to why the amendment was being proposed. Was a statutory requirement to change the current provision? CLG explained that in addition to clarifying HM Treasury's requirement to abate, the current abatement provision within the FPS 1992 was out of kilter with the corresponding provision in the NFPS 2006.
- 3.11 The Chairman said that abatement was especially relevant to schemes like the Police Pension Scheme and the FPS 1992 as they

both had a normal pension age which was significantly lower than the other major public pension schemes, and from 2010 would allow pensions to be paid below the statutory minimum age. The issue of abatement was further compounded by the fact that for the FPS 1992 commutation factors varied depending on the member's age at retirement and reached their highest value when a member attained 52 years' of age before declining thereafter: this actively encouraged members to retire early in order to access their commutation lump sums and apply for re-employment. He agreed that the reference to inter-service abatement should be omitted from the table of amendments and CLG would seek further clarification from HM Treasury on the application of inter-service abatement by public sector employers and pension schemes.

ACTION: CLG to seek further clarification from HM Treasury on the application of inter-service abatement by public sector employers and pension schemes.

- 3.12 Ivan Walker asked the Chairman to clarify the significance of the shaded comments on the table of proposed amendments. The Chairman explained that the shaded comments identified those proposals that CLG thought, subject to legal advice, could not be made as part of the consolidation process and would require a separate amendment order.
- 3.13 Members were advised that the table of proposed amendments that was attached to Annex A of paper FPC(09)1 would be put to lawyers. The resulting draft consolidation order and FPS 1992 amendment order would be subject to the normal twelve week consultation period in accordance with general Government policy and best practice.

Revised Commutation Factors – Grievance

- 3.14 CLG confirmed that an interim response had been issued to the retired firefighters who had submitted a grievance against the decision to apply the revised commutation factors retrospectively to pensions that came into payment only on or after 1st October 2007
- 3.15 The Chairman reiterated that it was CLG's view that submitting the grievances under the terms of the Internal Dispute Resolution Procedures (IDRP) was not the appropriate route as neither CLG nor GAD were the trustees/managers of the FPS. CLG was responsible for the regulatory framework of the firefighter pension schemes; individual FRAs were responsible for the administration and management of the schemes. Under the IDRP each grievance should have been sent to the appropriate FRA for their initial consideration. Following that, and in the absence of a satisfactory outcome, the next stage would have been referral to the Pensions Ombudsman. However, in the circumstances, CLG were willing to deal with the dispute.
- 3.16 The Chairman advised members that CLG were awaiting the outcome of the Judicial Review (JR) on the decision by the Home

Office to apply their revised commutation factors retrospectively to 1st October 2007. The case had been heard by the High Court on 17th December 2008 and judgement was expected in the middle of March 2009. Once the judgment was received, CLG would consider the details of the judgment and its impact on the FPS commutation grievances. CLG would then discuss the issue with HM Treasury and GAD before deciding a way forward. The extent to which the response would be dealt with by CLG or GAD would depend on the outcome, at the moment CLG was in the lead.

Internal Dispute Resolution Procedures

3.17 The Chairman confirmed that revised IDRPs guidance was issued on 2nd January 2009 under the cover of circular FPSC 1/2009. He also confirmed that the IDRPs template letters had been published on the CLG website.

Pensionable Pay

3.18 The Chairman said that CLG had asked their contacts in the FRS to clarify those elements of pay that their FRAs treated as pensionable. 17 responses had been received and showed some disparity in the treatment of several elements of pay. He confirmed that for the purposes of consistency and to ensure that employees were not paying pension contributions on elements of their pay that would not, or may not, be reflected in their pension, CLG would prepare and issue a general guidance note on pensionable pay.

ACTION: CLG to prepare and issue a general guidance note on pensionable pay

4. Appeal by three London firefighters – oral update

4.1 The Chairman explained that CLG was currently waiting for the judgement in the London Three appeal case. The appeal had been heard on 14th and 15th January 2009 and there was no indication of when the judgment would be given.

4.2 In response to a query from the FBU about the basis on which authorities should be working until judgment had been given, James Dalgleish said that the law as decided by the High Court judge applied, i.e. FPSC 11/2006 should be applied.

5. CETV guidance – oral update

- 5.1 Andy Boorman confirmed that CLG were still waiting for additional guidance from GAD regarding the new arrangements for calculating CETVs following recent DWP legislation. CLG would issue further guidance in due course.

6. Actuarial Valuation – FPC(09)2

- 6.1 The Chairman introduced Committee paper FPC(09)2. He said that GAD was currently carrying out an actuarial review of both the FPS and NFPS as at 31st March 2007. GAD was expected to publish a valuation report in the summer of 2009.
- 6.2 Ivan Walker asked whether he could view GAD's assumptions. The Chairman said that it was unlikely that GAD would want to discuss their assumptions prior to the report being published.
- 6.3 Ivan Walker also asked whether the income received from investing the Firefighters' Pension Fund (FPF) would be taken into consideration as part of the overall valuation. The Chairman explained that the firefighter pension schemes were pay as you go schemes and the contributions were used to pay pensions in payment. Consequently the FPF was not a fund that could be invested.
- 6.4 Des Prichard of APFO referred to the valuation of the FPS 1992, he said that as the scheme was now closed to new members the income from contributions would continue to decrease whereas the payments would increase as more FPS members retired. He asked whether the valuation took this into account. The Chairman explained that the valuation would calculate the cost of providing a pension for an individual throughout his/her career and that this costing would not increase as a result of the decrease in income from contributions.

7. Any Other Business

- 7.1 Alf Mason of LGA made reference to the NFPS 2006. He said that the Greater Manchester Fire and Rescue Service had received a number of requests from NFPS members who wanted to transfer pension benefits into the NFPS from other superannuation pension schemes, mainly the Armed Forces Pension Scheme. He said that a large number of these transfers were currently breaching the 40/60th limit on pensionable service and were therefore being rejected. He asked for clarification on why the 40/60th limit existed. The Chairman explained that the 40/60th limit for transfers was a condition imposed by HM Treasury.
- 7.2 Andy Boorman explained that part of the rationale behind imposing a limit on transfers limit was to prevent public sector pension schemes from being burdened by the liability of private sector pension schemes.

7.3 The Chairman said that CLG would ask HM Treasury to clarify the rationale behind the application of the 40/60th limit on transfers in from other public sector schemes.

ACTION: CLG to ask HM Treasury to clarify the rational behind the application of the 40/60ths limit on transfers in from other public sector schemes.

7.4 Ivan Walker made reference to pension increase legislation and asked what would happen in the case of deflation. Andy Boorman confirmed that pension increase legislation only took effect where the Retail Price Indices showed a year on year increase. As things stood, were there to be no increase, or a decrease, in RPI, pensions would remain unchanged. He also asked whether there was to be change away from RPI as a basis for calculating pension increases. The Chairman said that he was not aware of any proposals to change.

8. Dates of Future Meetings

28 May 2009
27 August 2009
18 November 2009
18 February 2010

***Communities and Local Government
March 2009***

Attendees

Martin Hill (Chairman)	DCLG
Andy Boorman	DCLG
Anthony Mooney (Secretary)	DCLG
Fred Walker	LGA
James Dalglish	LGA
Alf Mason	LGA
Jim Preston	SPPA
Bertie Kennedy	DHSSPSNI
Erika Beattie	DHSSPSNI
Terry McGonigal	NIFRS
Jason Pollard	Welsh Assembly
Julia Letton	Welsh Assembly
Sean Starbuck	FBU
Ivan Walker	Thompsons (Advisor to FBU)
Des Prichard	APFO
Ian Hayton	CFOA
Glyn Morgan	FOA
Tristan Ashby	RFU
Dr Will Davies	ALAMA

Apologies

Eunice Heaney	Consultant
Craig Thomson	FOA
John Terry	COSLA
Brian Wallace	COSLA
Dr Tok Hussain	ALAMA

FBU letter

Text of FBU letter:

FIRE BRIGADES UNION

GENERAL SECRETARY: MATT WRACK

Established 1918

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Please quote this reference on all replies

2009PENSIONS/SS

25th February 2009

Martin Hill
WPP Division
Department for Communities and Local Government
5F/6 Eland House
Bressenden Place
London SW1E 5DU

Dear Martin

CONSOLIDATION OF THE FPS: PAPER FPC(09)1 AND ANNEXES A AND B

We will be discussing the above papers at the FPC meeting on Thursday 26 February and I think it is important to record the FBU's position in advance of the meeting.

You have stated repeatedly, including most recently at the 27th FPC meeting held on 20th August 2008 (Paragraph 3.4), that the procedure envisaged is nothing more than tidying up and consolidating the rules, and that the process of consolidation will not make any substantive amendments. We have made the point that any substantive amendment will require a proper process of consultation in accordance with the BERR Code of Practice. I understand that a statutory instrument that purports to do nothing other than consolidate existing legislation *cannot* make substantive changes.

Annex A highlights the changes that the Department are considering which you believe are substantive. There may be others which we would add to the list. Annex B implies that the only point that the FBU has taken on the schedule of proposed changes relates to commutation before normal pension age/30 years service.

I must make it plain that the FBU is of the view that any substantive change should not be considered other than through a proper process of explanation and consultation. The FBU's view which currently is to oppose the suggested amendments, could then be properly explored and considered taking into account the views of other stakeholders.

In the heading to Annex A you say that the highlighted passages will be made prior to consolidation but you have said nothing about the process. We fully expect you to comply with the BERR Code of Practice, with a clear outline of the proposals and the need to make them, a proper period for consultation and a fully reasoned response

before draft regulations are laid.

Paper FPC(09)1 itself says that the Annex A contains a list of proposed changes but does not explain who has made the proposals or why, although clearly they come from the Department. You have informed us that the Department has no role in the management of the FPS, most recently in the letters attached as Annex C and Annex E, and I should be grateful if you would explain how having made this position known, you believe it appropriate for the Department to make any proposals at all.

A similar issue arises in relation to the discussion on the definition of pensionable pay (FPC(09)1 paragraph 4). You say that the Department will prepare and issue a general information note. We think that it is totally inappropriate for the Department, which has no role in the management of the Scheme to issue guidance, whether or not it is binding, on the meaning to be attributed to the Grey Book. The rules of the schemes must reflect the Grey Book, not vice-versa.

Yours sincerely

SEAN STARBUCK

National Officer
SS/EMH

Association of Principal Fire Officers (APFO)

**Consolidation of the Firefighters Pension Scheme 1992
Proposed Table of Rule Amendments – Rule K4**

Dear Martin,

At the meeting of the Firefighters' Pension Committee held on 28th November 2008, APFO raised concerns regarding proposed changes to the application of Rule K4, 'Withdrawal of Pension during service as a regular firefighter.

Under the current application of Rule K4, a firefighter may retire and if taking up a new contract of employment with a Fire & Rescue Service, under conditions other than those that previously applied, i.e. no longer conditioned to the 'Grey' or 'Gold' Book, and no longer a member of the Firefighters' Pension Scheme, that person could retire with their full pension entitlements, with their new employment providing full remuneration benefits i.e. abatement of salary did not apply.

We have always understood that if the person was to be re-employed in a position where 'Grey' or 'Gold' Book conditions of service applied, then abatement would take effect.

Under the proposals now being considered, persons being re-employed by a Fire & Rescue Service, in a position where 'Grey' or 'Gold' Book conditions of service did not apply and they would not be eligible to join the Firefighters' Pension Scheme, or the New Firefighters' Pension Scheme, i.e. in a position that was entirely different from an operational firefighting role, then the abatement rules would in future, be applied.

APFO oppose such a change on the grounds that it does not make any business sense and is not financially beneficial to the Fire & Rescue Service. Indeed, if such rules were to be applied in the future, it would in all certainty, dissuade experienced and skilled professionals who are retiring from the Fire & Rescue Service, to apply for post where the abatement rules were to be applied, reducing significantly, the pool of talent available to take up such posts.

Fire & Rescue Services would still be paying a pension with all entitlements to the employee who retired, but would lose the opportunity to benefit from their skills, if they were dissuaded from seeking re-employment due to the application of the abatement rules. The Fire & Rescue Service would then have the cost of advertising the role not filled by re-employing the retiring member of staff, and would still have to pay full remuneration for the new employee.

APFO would wish to see a full and detailed business case for introducing the proposal for application of Rule K4; in these difficult economic times with significant financial pressures on Fire Authority budgets and the wider public purse, the proposal being considered is significantly disadvantageous to taxpayers, Fire & Rescue Services, and potentially disadvantages our own employees.