

FIREFIGHTERS' PENSION COMMITTEE

NOTE OF THE 31st MEETING OF THE FIREFIGHTERS' PENSION COMMITTEE HELD ON 27th AUGUST 2009 AT ASHDOWN HOUSE, VICTORIA STREET, LONDON

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

1. Introduction

1.1 The Chairman welcomed everyone to the meeting. He introduced Christine McGuire of DHSSPSNI who would be taking over from Bertie Kennedy when he retired in November. He also conveyed Eunice Heaney's thanks for the Committee's best wishes at the last meeting.

2. Note of the 30th FPC meeting

2.1 The Chairman advised that the version of the note issued to members included an amendment at paragraph 3.7 following a request from Des Prichard of APFO.

2.2 Jim Preston of the SPPA made reference to paragraph 5.1 and asked for the note to reflect that it was the aim of the Police Dependants Trust to begin making one-off lump sum payments from July.

2.3 Subject to the changes outlined above, the note of the 30th FPC meeting was agreed.

3. Matters arising from the 30th FPC meeting - FPC(09)5

3.1 The Chairman introduced paper FPC(09)5 - 'Matters arising from the 30th FPC meeting'.

Consolidation of the Firefighters' Pension Scheme 1992

3.2 Public Service Abatement Policy – The Chairman said that he had received a letter from Ivan Walker regarding public service abatement. A copy had been issued to members. He pointed out that the examples quoted dealt only with inter-service abatement and that the extract from the LGPS did not fully reflect the provisions of the Scheme.

[Secretary's Note: The letter was sent to the Chairman via email on 24th August but was incorrectly dated 27th May 2009]

3.3 In the discussion the following points were made:

- Des Prichard referred to the 3rd bullet point at paragraph 3.4 of the note of the last meeting; he said that APFO disagreed with the argument that a FRA's decision not to abate a retired firefighter's salary on re-employment would not represent value for money from a taxpayer's point of view. If a FRA has a vacancy, then the salary for the position has to be paid regardless of whether or not the position was filled by a retired member of the FPS. He argued that if the position was filled by a retired firefighter then there would be significant savings with regards to advertising and recruitment costs. There was also the additional benefit that the FRA would be assured that they had recruited the best candidate for the job. He concurred with the view that the main argument for requiring abatement was public perception;
- James Dalglish confirmed that it is the LGA's view that there are two arguments for applying abatement; the first is public perception and the second is value for money;
- Des Prichard said that CFOs were ultimately responsible for managing the budgets of a FRA and that it was incumbent on them to look for value for money when managing the organisation. He said that, on behalf of Ian Hayton, it was CFOA's view that the re-employment of a retired firefighter could represent significant savings to a FRA;
- James Dalglish said that in terms of the FPS 1992 regulations, the application of abatement applies where a retired member is re-employed within the role of a firefighter. He said that based on legal advice that he had received as the rules do not currently provide for In-service abatement if a retired member is re-employed outside the role of firefighter, abatement cannot be applied. The Chairman said that CLG did not agree with this view;
- Des Prichard suggested that there were different interpretation of the abatement rules amongst the 45 English FRAs. The Chairman said that as CLG were the managers of the financing arrangements for firefighter pensions, they had a direct interest in achieving a consistent approach to the application of abatement;
- James Preston of the SPPA said that the Police Pension Scheme provides a discretion to abate a member's pension on re-employment, however, Regulation 5(10) of the Police Pension Fund Regulations 2007 requires that where a police authority continues to pay a pension in whole or in part where it has a discretion to abate, an amount equal to the amount of the pension paid must be transferred from the police fund into the police pension fund. This ensured that the Police Pension Scheme did not pick up the liability;

- Des Prichard made reference to the current position of the law and asked whether it precluded a retired FPS member from being re-employed in another capacity outside the role of firefighter and being paid his/her salary and full pension. The Chairman responded by saying that whilst the scheme regulations would permit this, it would not be in line with HM Treasury's public service abatement policy. HM Treasury's policy did not specifically prescribe that the member's pension should be abated. In circumstances where the member's pension cannot be abated, public service abatement policy would allow the member's salary to be abated;
- James Dagleish of LGA said that if an employer was to abate a member's salary on re-employment there could be an issue with equality of treatment for undertaking work of equal value.

Revised Commutation Factors

- 3.4 The Chairman explained that the matter was with ministers and once clearance had been received CLG would respond to the grievance and would issue further guidance to FRAs.
- 3.5 Sean Starbuck of the FBU said that it was evident that their members had become frustrated after CLG had initially promised to respond to the grievance by the end of June. It was FBU's view that until ministers made a final decision regarding the date that the revised FPS commutation factors should be applied, the revised factors should be applied retrospectively to 1st December 2006 as with the Police Pension Scheme. The Chairman responded that he understood the frustration but CLG had initially expected the issue to have been progressed in May. Ministerial approval was necessary as the matter was complex and involved substantial sums of public money. He assured members that CLG were treating the grievance as a high priority.
- 3.6 Sean Starbuck said that the FBU would be holding their next Executive meeting on 11th September where it was likely that it would be recommending the referral of the case to the Pension Ombudsman. The Chairman responded by saying that CLG would continue to pursue ministerial clearance and would try to get a form of response/update to the FBU prior to 11th September.

Appeal by Three London Firefighters

- 3.7 The Chairman advised the FPC that the draft CLG circular on ill-health retirement and the IQMP guidance, that had been circulated on the 1st June, had been updated to reflect comments received; these had now been submitted for ministerial clearance. He confirmed that until the

CLG 2009 circular was issued, the CLG 2008 circular on ill-health retirement continued to reflect CLG's view on ill-health retirement.

- 3.8 Sean Starbuck referred to ALAMA's capabilities guidance and said that the FBU had some issues on the terminology used. The Chairman said that as the guidance belonged to ALAMA any concerns would need to be raised with them. Will Davies said that ALAMA would be happy to discuss any concerns with the FBU.
- 3.9 James Dalglish said that it was LGA's view that some areas of the ALAMA guidance were technically incorrect. He would pursue these with ALAMA.

Actuarial Valuation

- 3.10 The Chairman confirmed that CLG were still waiting for the final report from GAD.
- 3.11 Sean Starbuck referred to his letter to the Chairman on 20th August and reiterated the FBU's request for a copy of the actuarial assumptions that GAD have used in advance of their final report. The Chairman said that it would not be appropriate for CLG to concede on this point. In so far as some of the assumptions must reflect scheme experience, it was only relevant to see them in the context of the data collected from authorities. This would be set out in GAD's report.
- 3.12 Des Prichard made reference to the discussion at the last FPC meeting and asked whether, with the recent media interest on the costs of public sector pension schemes, CLG still held the view there would not be an immediate need for contributions rates to increase.
- 3.13 The Chairman confirmed that CLG's position had not changed: it was unlikely that there would be a need to make any changes to contributions before April 2011. He noted that as income from employer/employee contributions of FPS members reduced with retirements from service, there would be a significant reduction in the income which would not be fully replenished by the income from the NFPS (which has significantly lower employee/employer contribution rates). This could lead to a change in contribution rates from April 2012.
- 3.14 The Chairman continued by saying that the continuance of the firefighter pension schemes as final salary schemes was a political matter and would depend on what happens to public sector pension schemes as a whole. Recent amendments have had some success in cutting waste and keeping the schemes viable, but it was a fact that pension costs were increasing at a much faster rate than other costs and HM Treasury, and therefore the taxpayer, were picking up the additional liability.

Pensionable Pay

3.15 The Chairman said that following the issue of paper FPC(09)4, responses had been received from CFOA and APFO. In the discussion the following points were made:

- James Dalglish said that the rules of the pension scheme determined what is pensionable pay and, therefore, it was necessary to form a framework so that decisions can be made locally. It was LGA's view that option 1 represented the best way forward but had reservations regarding the recuperation of past service costs from the FRA. LGA intended to submit a written response to the paper. LGA shared CFOA's and APFO's view on option 2;
- Sean Starbuck said that the FBU had carried out its own survey and the findings showed that there were major inconsistencies in the application of pensionable pay: there was a real need for clarification;
;
- The Chairman said that it was apparent that FRAs have introduced different allowances which are being treated as pensionable; this is having the effect of significantly increasing the costs of the pension schemes. Under Option 1, any FRA considering the introduction of a new pensionable element of pay would be required to bear the full cost that would otherwise fall to the pension scheme; this additional cost would be reflected in the employer contributions that the particular FRA would be required to pay to the Pension Fund. He referred to the Civil Service Pension Scheme and said that if a Government Department wanted to introduce an additional pensionable payment they, as the employer, were required to pay the full costs associated with past service liabilities associated with the allowance;
- Des Prichard said that FRAs are interpreting the scheme rules on pensionable pay differently and accepted that its regulation was important to ensure viability of the pension schemes and suggested that the issue warranted a separate meeting. The Chairman said that the Committee had already spent time discussing the issue and when LGA submitted their response, CLG would draft a consultation paper for general issue. The Committee would have a further opportunity to discuss once responses from the consultation had been collated and before Ministers made decisions on the amendment of the regulations.
- Sean Starbuck suggested that until a final solution was agreed, CLG should issue some guidance in the interim period. The Chairman said that CLG would consider issuing guidance to deal with what was perceived as the immediate issues.

ACTION: CLG to consider issuing guidance on pensionable pay to deal with what was perceived as the immediate issues

4. Any Other Business

Construction of a new employment contract

- 4.1 Des Prichard said that in cases where a firefighter has more than one contract of employment i.e. one contract as a whole-time regular firefighter and a second contract as an RDS firefighter, there was a common misconception that, if they were injured and permanently disabled whilst undertaking their RDS duties, they would be entitled to an injury award based on their whole-time service and rate of pay. He outlined an example of a firefighter who had been a whole-time regular firefighter for 20 years and a RDS firefighter for 1 year. He asked whether it would be possible to craft a contract to cover both the whole-time and RDS aspects of the firefighters work so that, if the firefighter was permanently disabled whilst undertaking RDS duties, he/she would receive injury compensation benefits based on the aggregate of their regular and RDS pensionable service.
- 4.2 The Chairman responded that the pension schemes were not concerned about contracts of employment. It was CLG's view that the construction of an employment contract as a device to circumvent the rules of the Firefighters' Compensation Scheme would not work. The RDS element of a firefighter's service would only be eligible for membership of the NFPS and would be treated as a pension membership in its own right for the purposes of the FCS.
- 4.3 Sean Starbuck said that there would also be implications for equality where a firefighter under such a contract could reasonably ask for overtime after completing 42 hours in any particular week.

South Yorkshire Case

- 4.4 Tam Mitchell FBU made reference to a case in South Yorkshire where the FRA are proposing to change existing contracts of employment by dismissing a number of firefighters and re-engaging them on the following day and asked whether this action would have any implications for their continued membership of the FPS. The Chairman responded that he was aware of the case and understood that the FRA's legal advice was that, as the objective of the dismissal and re-engagement of the firefighters was to enable the FRA to amend the terms of the contracts of employment, it would not constitute a break in service for pension purposes. Although the FPS was now a closed scheme, CLG had taken the view that if the FRA are satisfied that re-engagement does not constitute "taking up employment" again, then

Rule A3(5)(a) would not apply and the firefighters could retain their FPS membership.

Protected Pension Age for Chief Fire Officers

- 4.5 There was discussion regarding the protected pension age for Chief Fire Officers. Jim Preston confirmed that the SPPA had requested, and were still waiting for, a copy of HMRC's response to the Home Office regarding the Police Pension Scheme and Chief Police Officers. Andy Boorman pointed out that there was a difference between the terminology used in the HMRC guidance manual which refers to an "unqualified right" to retire from an age less than 55 years, and that used in the Finance Act legislation which refers to an "actual or prospective right" to retire from an age less than 55 years.
- 4.6 Jim Preston said that it was clear from separate advice from HMRC that those FPS members who were promoted to CFO after 5th April 2006 would not be affected by the change in legislation and would still be able to retire before age 55 years after April 2010 without incurring a tax penalty.

5. Dates of Future Meetings

18 November 2009
18 February 2010
13 May 2010

***Communities and Local Government
September 2009***

Annex A

Attendees

Martin Hill (Chairman)	DCLG
Andy Boorman	DCLG
Anthony Mooney (Secretary)	DCLG
James Dalglish	LGA
Jim Preston	SPPA
Bertie Kennedy	DHSSPSNI
Christine McGuire	DHSSPSNI
Terry McGonigal	NIFRS
Jason Pollard	Welsh Assembly
John Terry	COSLA
Sean Starbuck	FBU
Tam Mitchell	FBU
Des Prichard	APFO
Glyn Morgan	FOA
Tristan Ashby	RFU
Dr Will Davies	ALAMA

Apologies

Fred Walker	LGA
Eunice Heaney	Consultant
Ivan Walker	Thompsons (Advisor to FBU)
Ian Hayton	CFOA
Craig Thomson	FOA
John Barton	RFU
Brian Wallace	COSLA