

FIREFIGHTERS' PENSION COMMITTEE

NOTE OF THE 34th MEETING OF THE FIREFIGHTERS' PENSION COMMITTEE HELD ON 15th MARCH 2010 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 Dave Beverley of the FBU, Joanne Boyle of the Scottish Justice Department and Joe Lowe of COSLA who had not previously attended the Committee.

2. Note of the 32nd FPC meeting

2.1 The note of the 32nd FPC meeting was agreed.

3. Note of the 33rd FPC meeting

3.1 The Chairman confirmed that the note of the 33rd FPC meeting had been revised following comments from the FBU:

- **(Page 4, 4th bullet pt)** – inserted “*One of the reasons for introducing the NFPS was to address the cost of the FPS and it was unreasonable to seek to revisit decisions taken in 2006 not to close the Scheme.*”;
- **(Page 4, 7th bullet pt)** – amended to “*Reference was made to commutation: although it was recognised that the FPS commutation arrangements are considered to reduce long-term costs, other public sector schemes had already incorporated fixed commutation factors into their provisions as a means of making them more affordable.*”;
- **(Page 5, 2nd bullet pt)** – inserted “*The 11% member’s contribution for the FPS was already greater than in other public sector schemes and it would be unreasonable to expect members to pay more.*”.

3.2 Subject to the changes above, the note of the 33rd FPC meeting was agreed.

[Secretary’s Note: The revised note of the 33rd FPC meeting was issued to members on 15th March]

4. Matters' arising from the 32nd and 33rd FPC meetings

4.1 The Chairman explained that there was no "matters arising" paper for the meeting as all the items for discussion were covered by the agenda.

5. Age Discrimination – FPC(10)1

5.1 The Chairman advised members that on the basis of legal advice received, CLG had decided not to contest the current challenge to the FPS 1992 which alleged that the scheme discriminated, on account of age, against those members who joined the scheme prior to their 20th birthday and therefore had to pay employee pension contributions for more than 30 years before becoming eligible to retire and draw their pension from age 50. It was CLG's view that, whilst the requirement for members to pay contributions for more than 30 years before becoming eligible to retire was not discriminatory in itself, there was potential for discrimination in that the additional pension contributions paid by members for service over and above 30 years would not be reflected in their final pension. This discrimination would cease when the affected member attained age 50 years as they would have the same option to retire with an ordinary pension as other members.

5.2 CLG had decided to resolve the issue by amending the FPS 1992 to provide affected members with a "*contributions holiday*" from the point where they accrue 30 years' pensionable service until they reach age 50 years. On the basis that the age discrimination regulations came into force on 1st December 2006, claims would be accepted retrospectively to this date. Once the relevant amendments had been made to the Scheme, CLG would issue guidance to FRAs which would explain how repayments would be made to members who had already paid contributions during these periods.

5.3 Ian Hayton asked what would happen to the employers' contributions during contributions holidays. The Chairman confirmed that FRAs would be required to continue to pay the relevant employer contributions.

5.4 Fred Walker said that he would like to reserve the LGA's position on this as he would want to discuss this with colleagues.

5.5 Ivan Walker made reference to the age discrimination regulations and suggested that a provision existed within the legislation that would enable FRAs to repay the money with immediate effect. The Chairman responded by saying that an amendment to the financing provisions of the FPS 1992 would be necessary before FRAs could make the required adjustments to the Pension Fund.

- 5.6 Glyn Morgan asked for clarification on the timetable for issuing the guidance and making the associated amendments to the Scheme. The Chairman said that because of the looming election the amendments to the scheme would not be made until June/July. CLG would consider issuing guidance in the interim to FRAs advising them to cease taking contributions from members who had accrued 30 years' pensionable service and who had not reached 50 years' of age.

ACTION: CLG to consider issuing guidance to FRAs instructing them to cease taking contributions from members who had accrued 30 years' pensionable service and who had not reached 50 years' of age

- 5.7 Ian Hayton made reference to the impending changes to the tax regulations which meant that some Chief Fire Officers would be unable to retire until age 55 years. He said that some of these members will be required to pay contributions for more than 30 years before first becoming eligible to retire. The Chairman confirmed that the point would be noted.

6. Pensionable Pay: Response to consultation – FPC(10)2

- 6.1 It was agreed that the note of this discussion would be non-attributable.
- 6.2 During the discussion the following views were expressed:
- Flexible Duty Allowance (FDA) and London Weighting should not be in the scope of proposals to redefine pensionable pay. The focus should be on new allowances only;
 - the issue of the pensionability of pay directly impacted on the affordability of the pension schemes and significant elements such as FDA and London Weighting should not be ignored;
 - the proposals could impact on existing NJC pay agreements which had already established Flexible Duty Allowance (FDA) as part of final pensionable pay;
 - FDA should be considered as part of basic pay for the purposes of determining the pensionability of pay;
 - the pensionability of firefighter pay was determined by the pension schemes and not the Grey Book;
 - the NJC had no remit to discuss or determine the pensionability of firefighter pay. The regulations of the pension schemes took primacy over any Grey Book agreements on pensionability;

- FDA was a temporary allowance and could be withdrawn. If a member did not receive FDA in his/her final three years prior to retirement, the pension contributions paid on FDA would not be reflected in his/her pension. The introduction of APBs would ensure that the member would receive a pension benefit for each year that they were in receipt of FDA;
- FDA cannot be withdrawn without the agreement of the firefighter;
- FDA and additional responsibility allowances (ARAs) can be attractive to scheme members in their last three years of service as a means of enhancing their pensions;
- a possible solution would be if a member first received FDA or an ARA in one of their last three years prior to retirement the employing FRA would be required to accept the additional pension liability associated with the enhanced pensionable pay. In response, it was suggested that this may infringe on age discrimination legislation in that FRAs may be less willing to offer positions that attracted FDA or an ARA to those members in their last three years of service;
- FDA had always been recognised as part of pay and was used to attract applicants to undertake flexible duties. If FDA was no longer treated as part of final pensionable pay then FRAs may find that in the future posts would be less attractive;
- whether or not FDA was pensionable would have little or no bearing on a firefighter's willingness to undertake the duty system;
- FDA could still be treated as pensionable but under the terms of APBs rather than part of final pensionable pay;
- the proposed options were not attempting to preclude elements of pay from being pensionable. Under the proposals FRAs would have local discretion to determine the pensionability of pay under the terms of Additional Pension Benefits (APBs);
- there was a need for a clear definition of basic pay which would be used to determine final pensionable pay. FRAs would then have the discretion to include additional elements of pay as pensionable under the terms of APBs;
- the FPC was not a negotiating forum for firefighter's pay. There was a need for input from the NJC;
- the NJC has consistently been unwilling to involve itself with pension issues;

- the NJC had agreed that Continued Professional Development (CPD) allowance would be pensionable. CLG then subsequently amended the pension schemes to accommodate this agreement;
- Initially, CLG had advised that the CPD allowance should not be pensionable as the payment was temporary in nature. CLG subsequently amended the pension schemes so as to treat the CPD allowance as pensionable only after Ministers had accepted that they would be pensionable under the terms of APBs and not because the NJC had agreed it;
- the provisions of the pension schemes should accommodate what employers are prepared to pay;
- under the financing arrangements introduced in 2006, central Government underwrite the cost of pensions and therefore have an interest in ensuring their affordability;
- NJC should liaise with CLG before finalising agreements on pensionable pay. This would prevent the situation arising where CLG could veto agreements already reached between employers and employees;
- there should be tripartite negotiations for discussing these issues similar to that used in the Police Negotiations Board;

6.3 The Chairman concluded discussions by saying that CLG would need to give further thought to the issue of pensionable pay within the framework outlined in paper FPC(10)2. The issue would be revisited at the next meeting.

7. FPS: Options for the future – FPC(10)3

7.1 The Chairman introduced committee paper FPC(10). Following the valuation exercise carried out by GAD, it was evident that the underlying costs of the firefighter pension schemes to employers had increased from 21.3% to 24.4% which essentially meant that there was a funding gap of 3.1% of pensionable pay. Bearing in mind the state of the public finances, it was imperative for both employer and employee organisations to seriously consider options on how the funding gap could be filled. Any incoming administration would want assurances that the rising costs of the schemes were being addressed.

7.2 It was agreed that the note of the discussion would be non-attributable.

7.3 During the discussion the following views were expressed:

- the findings of the actuarial valuation being based on FRS statistical and financial data from 2007 meant that there was no current indication of the cost of the schemes;
- it would be difficult to consider any options for the future until it was known how much savings were needed to make the schemes sustainable;
- future projections of scheme costs were required;
- the costs of providing a pension for both members of the FPS 1992 and NFPS 2006 had grown mainly a result of increases in longevity. Reductions in the rates of ill-health retirements had helped to offset the costs associated with increases in longevity, however, the underlying costs to employers has increased and was expected to continue rising;
- there was a need to look at other options to cut costs over varying time periods i.e. short, middle and long-term;
- if the overall pension fund deficit increased, ultimately it was likely that the FRS would be hit through cuts in other areas. Consideration needed to be given as to how the deficit could be redistributed between employer and employee; or how the benefit structures of the pension schemes could be reformed, or a combination of both;
- all public sector pension schemes were addressing costs. At this stage it was necessary to look at all the options available in order to determine which were viable and, therefore, could be progressed;
- all the options for the future identified in the paper had a certain merit. It would be helpful to have a costing analysis for each option so that each potential saving could be considered against the overall funding gap;
- the Government was already committed to saving £1billion from public sector pensions. The firefighter pension schemes was not exempt from contributing to these savings;
- cash flow for FRAs would be a real issue over the next few years and, therefore, short-term options would also need to be considered.

7.4 The Chairman concluded discussions on the issue by saying that CLG would liaise with GAD with a view to providing cost projections and a cost analysis for the options identified.

ACTION: CLG to liaise with GAD with a view to providing cost projections and a cost analysis for the options identified.

8. FPS: Cap and share – FPC(10)4

8.1 The Chairman introduced committee paper FPC(10)4. He said that the Government's Cap and Share policy was being extended to all public sector pension schemes in order to limit costs to the taxpayer. The cap would work by putting a limit on employer contribution rates.

8.2 Paul Fuller of APFO asked how the cap would be determined. The Chairman explained that the cap would usually be the employer's contribution rate from the previous scheme valuation. He expected Cap and Share to become effective for the firefighters' pension schemes from about 2016 as the next valuation as at 31 March 2011 would set the cap for employer contributions.

8.3 Reference was made to the employer contribution rates for the NFPS 2006 which were in line with the employer contribution rates for the NHS and Teacher's pension schemes.

8.4 The Chairman concluded by saying that further discussion regarding the Cap and Share would be generated as part of the consideration of options for the future.

9. Any Other Business

9.1 There were no items raised.

10. Dates of Future Meetings

13 May 2010 (11am)
25 August 2010 (11am)
17 November 2010 (11am)
2 February 2011 (11am)

***Communities and Local Government
March 2010***

Annex A

Attendees

Martin Hill (Chairman)	DCLG
Andy Boorman	DCLG
Anthony Mooney (Secretary)	DCLG
James Pepler	GAD
Fred Walker	LGA
Ged Murphy	LGA
James Dalglish	LGA
Joanne Boyle	Scottish Justice Department
Gillian McMaster	DHSSPSNI
Erika Beattie	NIFRS
Joe Lowe	COSLA
John Terry	COSLA
Jason Pollard	Welsh Assembly
Sean Starbuck	FBU
Tam Mitchell	FBU
Dave Beverley	FBU
Ivan Walker	Thompsons Solicitors
Ian Hayton	CFOA
Paul Fuller	APFO
Glyn Morgan	FOA
Tristan Ashby	RFU

Apologies

Christine McGuire	DHSSPSNI
Jenny Coltman	SPPA
Brian Wallace	COSLA
Eunice Heaney	Pensions Consultant
Des Prichard	APFO