



Firefighters' Pension Scheme Circular

Circular Number:	FPSC 8/2009	Date Issued:	9 th September 2009
Action:	For Information [informal, non-statutory, guidance]		
Title:	<i>Firefighters' Pension Scheme:(A) Commentary on Ill-health retirements;(B) Provision of Boards of Medical Referees</i>		
Issued by:	Martin Hill Workforce Pay and Pensions Division		

Summary:	<i>This circular updates Fire and Rescue Authorities on (A) the consequences of the decision of the Court of Appeal in Marrion & others and its impact on the guidance given in FPSC 8/2008, issued on 24 October 2008; and (B) arrangements for procurement of a new contract for Boards of Medical Referees.</i>
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(A) Commentary on Ill-health retirements

1. Purpose of this circular

- 1.1 This circular draws attention to the judgment of the Court of Appeal in the case of Marrion & others and its implications for: (i) the management of ill-health retirements for members of the Firefighters' Pension Scheme 1992 (FPS); and (ii) the informal guidance set out in Firefighters' Pension Scheme Circular 8/2008.

2. Relevant duty

- 2.1 The Court decided that:

“the correct construction of rule A10(2) [of the FPS (i.e. “Disablement means incapacity ... for the performance of duty”)] is that the question of permanent disablement depends on the duty within his contract for the performance of which the [firefighter] is being considered. If he is only being considered for the duty of an operational firefighter, then the issues of disablement and permanency have to be answered on that basis; and if he is also being considered for non-operational duties, then those issues will have to be answered on that additional basis too. It is of course possible for different answers to be given accordingly”. (paragraph 107)

- 2.2 In summing up the matters discussed in his judgment (paragraph 123), Lord Justice Rix held

“(i) The correct construction of A10(2) is the relevant duty construction. The question for the IQMP and, if raised on appeal, for the Board, is whether the [firefighter] is (permanently) subject to incapacity for the performance of his operational firefighting duty and any other duties within the definition of “regular firefighter” and within his contract which it is proposed that he perform, but not any additional duties. If therefore no redeployment away from operational firefighting is available, then the question stops with (permanent) incapacity for the performance of operational firefighting.”

- 2.3 He went on to give guidance:

“(iii) I would suggest that if no question beyond that of operational firefighting is raised for the IQMP, so that an authority's A15(1) decision is taken on that basis, that authority cannot refuse ill-health retirement on the ground that non-operational redeployment is now available without putting the

matter back to an IQMP for a further opinion. It follows that there is good sense in the guidance given in paras 1.9/10 of the 2008 guidance¹, developed with the assistance of the Ill-Health Review Group. I would prefer to think that the new opinion would arise on issues under rule H1(2)(a) and (b), rather than (f).”

2.4 Lord Justice Rix gave further guidance which is relevant:

“(iv) Once an authority has taken an A15(1) decision on the basis of permanent disablement for operational duty in the absence of any proposal on its part for redeployment to non-operational duties, it is too late for that decision to be avoided by a Board's decision that the ex-fireman concerned is fit for non-operational duties.

(v) Similarly, a [firefighter] who has retired on ill-health grounds on the basis of permanent disablement for operational firefighting duty is not at risk under Part K on the basis that a non-operational job has now become available.”

3. Conclusion

3.1 CLG takes the view that the informal guidance set out in FPSC 8/2008 (<http://www.communities.gov.uk/publications/fire/fpsc82008>), and in particular paragraphs 1.9 and 1.10, correctly reflect the relevant provisions of the FPS.

4. Guidance for Independent Qualified Medical Practitioners (IQMP)

4.1 As envisaged at paragraph 1.13 of FPSC 8/2008, revised IQMP Guidance to reflect the guidance set out in that Circular is appended.

5. Best Practice Guidance

5.1 The HR best practice guidance produced by the Local Government Association and referred to at paragraph 1.14 of FPSC 8/2008 is available on the LGA website.

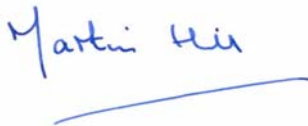
(B) Provision of Boards of Medical Referees

6. As fire and rescue authorities will be aware, BUPA have provided Boards of Medical Referees since the arrangements were introduced in 1997. Their second contract was due to expire in 2008, but it was agreed with the Company that it should be extended until judicial proceedings in the case of Marrison & others had concluded, in case the outcome resulted in the need to make substantive changes to the procedures set out in Schedule 9 of the FPS. Following the judgment of the Court of Appeal BUPA informed us that due to the restructuring of

¹ FPSC 8/2008

the relevant part of the company they did not wish to continue providing the service under the old contract and would withdraw with effect from 30 June.

7. The necessary arrangements for the procurement of a new contract is in hand but it is not expected that this will be completed until November/December. In consequence, we do not expect effective arrangements to be in place before the end of the year or January 2010.
8. There is, therefore, currently no service to provide Boards of Medical Referees to hear medical appeals against the decisions of Independent Qualified Medical Referees under the Firefighters' Pensions Scheme and the Firefighters' Compensation Scheme. This will necessarily delay all work on appeals currently with the CLG, although we are discussing with BUPA the arrangements for the rehearing of cases where the High Court has quashed the decision of a Board.
9. We will make every effort to secure a new service as soon as possible and to move cases forward once this has been achieved. CLG is writing individually to the appellants affected by this to explain the situation to them.
10. Further guidance will be issued in due course.



Martin Hill