



Weightmans

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FPS Coffee Morning

Compensation Scheme Workshop

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## Agenda

- Overview of the Regulations:
  - Eligibility
  - Exclusions from eligibility
  - Injury Awards
  - Permanently Disabled
  - Qualifying Injury
  - Exercise of duties
  - Causation
  - Determinations under the regulations
  - Degree of disablement
  - Review of injury pensions

## The Firefighters' Compensation Scheme (England) Order 2006

### Eligibility:

- Scheme applies to 'regular' and 'retained' firefighters, and their spouses or civil partners and dependents

- 'Regular' firefighter:

*(a) A person who is employed–*

*(i) by a fire and rescue authority as a firefighter (whether whole-time or part-time), other than as a retained or volunteer firefighter; and*

*(ii) on terms under which he is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to his role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting) and whose employment is not temporary;*

## The Firefighters' Compensation Scheme (England) Order 2006

### Eligibility:

- 'Retained' firefighter –

*A person who is employed by an authority–*

*(a) as a retained firefighter, but not as a regular firefighter or a volunteer firefighter,*

*(b) on terms under which he is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to his role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting),*

*(c) otherwise than in a temporary capacity, and*

*(d) who is obliged to attend at such time as the officer in charge considers necessary, and in accordance with the orders that he receives;*

## The Firefighters' Compensation Scheme (England) Order 2006

### Exclusions from eligibility

- Temporary contracts?

A person who has ceased as a regular firefighter and entered temporary employment is covered by the scheme in very limited circumstances set out in the regulations, e.g. in connection with various training roles

- What about those who join the service at a senior level?
- What about secondary contracts?

Q. Have people come across other examples of eligibility issues?

## The Firefighters' Compensation Scheme (England) Order 2006

### Injury awards

- A firefighter is entitled to (1) a gratuity; and (2) an injury pension if:
  - Retired
  - Permanently disabled; and
  - The infirmity was occasioned by a 'qualifying injury'
- Additional compensation for death or permanent incapacity while on duty i.e. where death is solely caused by a 'qualifying injury' or permanent incapacity for carrying out any occupation is solely caused by a 'qualifying injury'

## The Firefighters' Compensation Scheme (England) Order 2006

### Permanently disabled

- Incapacity occasioned by infirmity of mind or body for the performance of duty
- “*performance of duty*” is not defined under the Compensation Scheme regulations
- For IHR benefits under the pension scheme regulations a member must be “*incapable of performing any of the duties of the role*”
- “*role*” is defined as the firefighter’s Rolemap role
- *NB: the Marrion case* – includes operational & non-operational duties unless no redeployment opportunities exist

## The Firefighters' Compensation Scheme (England) Order 2006

### Permanently disabled

- Disablement must continue to the person's normal pension age (age 60 for the 2015 Scheme)
- If as a result of a 'qualifying injury' a person is receiving inpatient treatment at a hospital he shall be treated as being totally disabled
- Where a person has retired before becoming disabled and the date of disablement can not be ascertained, it shall be the date when the claim that he is disabled is first made known to the FRS
- No payment of an injury pension can be made for a period before a firefighter became permanently disabled



## The Firefighters' Compensation Scheme (England) Order 2006

### 'Qualifying Injury'

- An injury received by a person, without his own default, in the exercise of his duties as a regular or retained firefighter
- Injury includes disease
- An injury is treated as having been received by a person without his default unless the injury is wholly or mainly due to his own serious and culpable negligence or misconduct

Q. A very high bar? Are there any examples out there where an injury has been wholly or mainly due to a firefighter's own serious and culpable negligence or misconduct?

## The Firefighters' Compensation Scheme (England) Order 2006

### Exercise of duties

- To be a 'qualifying injury' it has to be received in the '*exercise of his duties as a regular or retained firefighter*' – again not defined in the regulations
- Not referred to in the IQMP guidance

### Q. What does '*exercise of duties*' mean?

- Does the injury have to be sustained whilst on operational duties?
- What about an injury sustained whilst at the fire station during rest periods?
- What about an injury sustained whilst being on call away from the fire station, whilst waiting for a call out?
- What about an injury sustained whilst journeying to and from reporting for duty?

## The Firefighters' Compensation Scheme (England) Order 2006

### Causation

- The infirmity has to be occasioned by a qualifying injury
- Where a firefighter has become permanently disabled, any infirmity of mind or body shall be taken to have been occasioned by an injury if the injury caused or substantially contributed to the infirmity
- It is not necessary to establish that the work circumstances are the only cause of the injury
- What matters is that work circumstances have a causative role

## The Firefighters' Compensation Scheme (England) Order 2006

### Causation

- Long established case law on permanent incapacity and whether it was caused by an injury received whilst on duty
- Most of the case law comes from the police injury benefit scheme
- The police and fire injury benefit schemes are fairly similar, so the police case law is relevant to fire and is a good indicator of the direction of travel of the courts in such cases
- The case law is complex, full of pitfalls, is ever changing and can appear contradictory

## The Firefighters' Compensation Scheme (England) Order 2006

### Causation

- Some of the confusion in police injury on duty cases arises from the fact that injury on duty is not, in practice, considered at the same time as IHR, therefore there can be different SMPs deciding IHR and injury on duty, who come to different conclusions regarding permanent incapacity, and often years apart
- For fire IHR and injury on duty are more often considered alongside each other by the same IQMP, which probably reduces the number of disputes

Q. Do any FRA's not consider injury on duty alongside IHR?

## The Firefighters' Compensation Scheme (England) Order 2006

### Causation

- Physical injuries tend to be more easily attributable to work duties
- Psychiatric injuries tend to be much more difficult to attribute to work duties
- There has to be a substantial causal connection between the permanent incapacity and the qualifying injury
- It is accepted, particularly with psychiatric illness, that it can arise out of a combination of work and external circumstances

## The Firefighters' Compensation Scheme (England) Order 2006

### Causation

Q. Has anyone had experience of causation issues, where it was unclear or disputed as to whether permanent incapacity was caused by a qualifying injury?

- Examples from police case law:
  - Depressive illness caused by subjection to disciplinary proceedings
  - Depressive illness caused by a combination of a still birth, wife's treatment by the police force, the officer's perception of how colleagues treated him after his wife won her case against the force and investigation from a neighbours complaint

## The Firefighters' Compensation Scheme (England) Order 2006

### Determinations under the regulations

- Whether a person is entitled to any and if so what award under the regulations is determined in the first instance by the FRA
- Before making a determination the authority is required to obtain a written opinion of an IQMP as to–
  - Whether any disablement has been occasioned by a qualifying injury
  - The degree to which a person is disabled
  - Any other issue wholly or partly of a medical nature



## The Firefighters' Compensation Scheme (England) Order 2006

### Determinations under the regulations

- If a person is dissatisfied with a medical opinion he may appeal to a Board of Medical Referees
- A person can ask for a reconsideration by the FRA if the FRA does not admit the claim at all or does not admit the claim for injury benefits to the full extent
- If dissatisfied on a reconsideration an appeal may be made to the Crown Court

Q. There is very little case law on disputes arising from the Compensation Regulations. Has anyone had much experience of appeals to a Board of Medical Referees/Crown Court?

## The Firefighters' Compensation Scheme (England) Order 2006

### Degree of disablement

- After establishing disablement has been occasioned by a qualifying injury, the next step is to consider the extent to which the qualifying injury has caused or substantially contributed to the permanent disablement
- The injury gratuity and pension is partly based on degree of disablement
- Degree of disablement is determined by reference to the degree to which an individual's earnings capacity has been affected as a result of a qualifying injury

## The Firefighters' Compensation Scheme (England) Order 2006

### Degree of disablement

- The IQMP guidance provides that:
  - Consideration is given to the type of work an individual might undertake, both in terms of functional capability and skills/experience
  - FRA should provide details of a firefighter's skills, educational qualifications and an indication of the types of alternative employment they think appropriate
  - Any secondary employment or previous employments will be relevant

## The Firefighters' Compensation Scheme (England) Order 2006

### Degree of disablement

- The medical opinion should consider whether the member could carry out these alternative employments and, if not, what would be within member's capability from a medical viewpoint
- The IQMP may need to confirm with the FRA that the individual has the necessary skills/competence for the employments the IQMP considers is within the individual's medical capabilities

## The Firefighters' Compensation Scheme (England) Order 2006

### Degree of disablement

- Normally an average of earnings from three employments would be used to calculate the degree of disablement
- To try and ensure consistency national rates of pay from the ASHE tables (Annual Survey of Hours and published by the Official of National Statistics should be used when calculating degree of disablement
- Apportionment should be used to avoid liability for non-occupational factors

## The Firefighters' Compensation Scheme (England) Order 2006

### Degree of disablement

- Before apportionment can arise each factor must have separately caused some degree of loss of earnings capacity on its own
- It is for the IQMP to consider apportionment on the basis of the evidence and applying his/her medical judgement

Q. Degree of disablement and apportionment can be complex to ascertain. Has anyone had experience of issues arising from this?

## The Firefighters' Compensation Scheme (England) Order 2006

### Review of injury pensions

- The regulations require the FRA to consider whether the degree of disablement has substantially altered at such intervals as they think fit
- If the degree of disablement has substantially altered, the injury pension shall be reassessed accordingly
- Where, on review, the disability has ceased, the injury pension shall cease with immediate effect

Q. How many FRA's are carrying out a review of injury pensions and at what intervals?



Questions?