

FIREFIGHTERS' PENSION COMMITTEE

NOTE OF THE 24th MEETING OF THE FIREFIGHTERS' PENSION COMMITTEE HELD ON 19th SEPTEMBER AT ELAND HOUSE, BRESSENDEN PLACE, LONDON

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

1. Introduction

1.1 The Chairman welcomed everyone to the meeting. He introduced Jenny Amos and Tristan Ashby of the RFU who were attending for the first time and standing in for John Barton; Erika Beattie of DHSSPSNI who was also attending for the first time and was standing in for Bertie Kennedy; and Doug Christie of Thompson's solicitors who was standing in for Ivan Walker.

2. Minutes of the 23rd FPC meeting

2.1 The minutes of the 23rd FPC meeting were agreed.

3. Matters arising from the 23rd FPC meeting - FPC(07)11

3.1 The Chairman introduced committee paper FPC(07)11 - 'Matters arising from the 23rd FPC meeting'.

III-Health related Issues

3.2 The Chairman advised members that he had attended a meeting with the CFOA Task and Finish Group in August following the concerns that were raised at the last meeting. He said that he was satisfied that matters were progressing.

3.3 Ian Hayton of CFOA said that the Task and Finish Group were considering the options for redeploying firefighters. The Group would prepare a report which would be forwarded to the CFOA HR Strategy Group for which Des Prichard was the CFOA lead. He said that he expects the report to be completed by the end of October 2007. When finalised the report would be submitted to the FPC for consultation.

3.4 Doug Christie of Thompson's commented that where a firefighter was offered redeployment to a position covered by Green Book terms and conditions they would not be legally required to accept.

3.5 The Chairman highlighted that there were no references to Green or Grey Books terms and conditions in either of the pension schemes and he did not see that it was relevant. The schemes were concerned with a person's role.

3.6 Doug Christie said that he wanted to pick up the issue of ill-health retirement and its connection to FPS circular 11/2006. He handed out a paper which documented, from the FBU's perspective, the

chronology of events that led up to the current ill-health arrangements (attached at Annex B). He suggested that the consultation on amendments relating to the 2004 amendment order either did not make clear the true effects on ill-health retirement arrangements, or the current guidance did not accurately reflect the scheme amendments. He contended the latter but takes the view that it is one or the other. He highlighted his concerns as follows:

- In 2003 DCLG, formerly known as ODPM, initiated a consultation on amendments to the FPS, in particular the definition of 'regular firefighter'. The consultation highlighted that the change to the definition of regular firefighter was for the benefit of the members as it would allow those who were permanently disabled for operational duties to remain in the pension scheme if they were redeployed to undertake other role related duties.
- The suggestion that the change in the definition of regular firefighter was intended for the benefit of the member was supported by DCLG's response to the consultation whereby they stated in Fire Service circular 14/2004...*"A change in the definition of firefighter allowing people to remain in the pension scheme if they undertake roles other than firefighting. At present, a firefighter no longer engaged in full operational duties is unable to remain in the scheme"*
- When the Statutory instrument making the 2004 amendments was laid before Parliament the related explanatory memorandum that was prepared highlighted the impact as *"....it will allow them [FRAs] to retain in service staff who, whilst not fit for operational duties, are capable of doing other appropriate work..."*.
- Fire Service Circular 30/2004 was issued in 2004 and advised that the amendment to the definition of regular firefighter would come into effect from 13 September 2004 and stated that *"....the amendment also allows a regular firefighter who is appointed on terms under which he or she is, or may be, required to engage in firefighting to remain eligible for the FPS if disablement means that the person can no longer undertake operational duties but would still be fit, and is required to undertake other duties of his/her role.....If the FRA cannot offer other employment, fitness to perform other duties would not be relevant and the person may be retired with an ill-health award"*. This circular advised that where no alternative employment could be offered the member could still be ill-health retired.
- Fire Service Circular 11/2006 was issued on 23rd September 2006 advising FRAs that the DCLG guidance issued under cover of circular 30/2004 had been revised and included *"....The test in assessing whether a regular firefighter ought to retire on the grounds that he is permanently disabled under Rule A15 is whether he is permanently disabled for firefighting and for performing other duties appropriate to the role"* It is argued that this is a complete turn around from the position prior to the issue of this circular as this means that no member can be given ill-health retirement unless they are disabled to the

point where they cannot do any duties within the role map which includes work such as desk duties.

- Guidance for IQMPs which was issued under cover of circular FPSC 8/2007 advises FRAs that “...*whether or not a job is available for the member is not a matter for the pension scheme and should not be taken into account by the IQMP when reaching his opinion*”. As the decision of the IQMP is binding of the FRA, provided the member can carry out one of the duties of the role of a firefighter he/she cannot be permanently disabled and therefore would not be entitled to ill-health/injury retirement.

3.7 Doug Christie said that he believed Parliament, the FPC, and stakeholders had been misled as, in his view, all previous discussion was based around flexibility for firefighters. He continued by saying that it seems that FRAs can now refuse to give an ill-health/injury pension to a firefighter for any injury no matter how serious as long as that firefighter can undertake at least one duty of the role of a firefighter which might include tasks such as completing forms. He suggested that that it would be near impossible for an injured firefighter to satisfy the current permanent disablement test. He said that, in his view, DCLG had not been clear about the proposals from the start and suggested that the amendment to the definition of regular firefighter had been sold as one thing and it is now being suggested they meant something completely different.

3.8 Glyn Morgan of FOA and Tristan Ashby of the RFU supported this view.

3.9 Fred Walker of LGA said that he had not heard of any problems and asked if the FBU were aware of any cases of people being injured and retained in service where it would clearly be unreasonable for them to be so. The FBU were not aware of any such cases.

3.10 The Chairman responded to Doug Christie’s comments by saying that in light of an ongoing Judicial Review regarding three LFEPAs firefighters who had appealed against the board of medical referee’s decision that they were not permanently disabled, it would be inappropriate for him to say much as he would not want to compromise DCLG’s position. However, DCLG had issued circular FPS 11/2006 for clarification purposes when a FRA had been challenged on an ill-health decision. He emphasised that the FPS circulars did not constitute statutory guidance and only represented DCLG’s view of the rules of the pension schemes. Only the courts could determine whether or not DCLG’s guidance was a correct interpretation.

3.11 The Chairman made reference to the ‘Guidance for IQMPS’ which had been issued under cover of circular FPS 8/2007. He said that all members had been consulted regarding the content of the document and the final version reflected comments received. The issue of circular FPSC 8/2007 and guidance had no impact on the role of an IQMP which was established by the schemes. An IQMP should always look at the firefighter’s capability of undertaking role related

duties. Whether an appropriate position was available would be determined by the FRA and not the IQMP.

- 3.12 In concluding, the Chairman said that discussion on the issue of ill-health retirement had been held previously and had been well documented. He said that the CFOA Task and Finish Group had been given the job of looking at acceptable solutions for both firefighters and the taxpayer.
- 3.13 Dean Mills said that FBU's main concern was that until the issue had been resolved the guidance issued by DCLG in circular FPS 11/2006 was still being applied by FRAs. The FBU would like DCLG to retract this guidance.

Split Pensions

- 3.14 The Chairman said that he had received a few comments regarding the amendments for split pensions in the FPS and CPD and LSI additional pensions in both schemes. He said that DCLG were satisfied that the amendments were now correct.
- 3.15 Dean Mills confirmed that the FBU were content with the amendments.

Secondary Contracts

- 3.16 Ian Hayton of CFOA made reference to DCLG's guidance on secondary contracts that had been issued under cover of circular FPSC 6/2007 and asked for the Chairman's assurances that it would not be changed in the future.
- 3.17 The Chairman said that he was satisfied that the guidance was correct. He assured members that DCLG did not intend to alter the guidance unless it is shown that it was incorrect. Queries received by DCLG suggested that FRAs have been giving firefighters additional contracts of employment which were questionable in regards to eligibility for scheme membership. It would have been better if the FRAs had approached DCLG for clarification on the rules of the pension schemes before making such arrangements.
- 3.18 Doug Christie of Thompson's said that it was FBU's view that the provision of second contracts of employment was being used by FRAs as a device for by-passing the need to pay over-time. He said that the FBU recognised that this had led to implications for pensions.

4. Board of Medical Referee: renewal of contract – FPC(07)12

- 4.1 The Chairman introduced committee paper FPC(07)12. He said that this paper was to inform members that the DCLG had initiated the process to renew the contract for the boards of medical referees. The OJEU notice had been published in the previous week and companies could now approach DCLG regarding the contract.

- 4.2 The next step was to establish an evaluation panel so that potential suppliers could be assessed and to make recommendations on awarding the final contract. The Chairman said that he would act as Chairman and would expect the panel to include representatives from FRAs and Unions. He said that as the contractor will also provide boards for the police and firefighter schemes in Scotland it would be expected that representatives from SPPA and the police would also form part of the panel.
- 4.3 Dean Mills confirmed that he would be FBU's representative on the evaluation panel.
- 4.4 Ray Jennings said that the LGA would confirm their nomination but it was most likely to be someone with an HR background.

ACTION: LGA and SPPA to nominate representatives for the evaluation panel for the renewal of the board of medical referees contract

5. Any Other Business

(i) Age discrimination

- 5.1 The Chairman highlighted to members that a Manchester company of solicitors were actively encouraging firefighters who had joined the FPS at age 18/19 years of age, and therefore have to work more than 30 years before becoming entitled to a pension, to give their expressions of interest to challenge the pension scheme on the grounds that this contravenes the age discrimination regulations. His main cause of concern was that the company had set up a website to accept expressions of interest and that the website address was www.firefighterspensionscheme.co.uk. He said that he was concerned that users could get confused and consider this to be an official site for firefighter pensions.

(ii) Personal pension schemes - cash equivalent transfers

- 5.2 The Chairman also said that DCLG had become aware that an independent financial adviser had been approaching firefighters in Mid and West Wales and advising them about transferring their pensions into personal pension schemes. It was not clear whether this was more widespread. The immediate benefit to the firefighter would be a lump sum of 25% of the cash value which would be greater than that paid on commutation but would reduce the value of other benefits. This practice could have implications for smaller FRAs outside the English financing arrangements and could place restraints on their budgets if several firefighters requested to transfer their pensions at the same time. He also said that if the practice was to gather momentum and became large scale then this could lead to a heavy financial impact for FRAs. The FBU were unaware of these approaches and the Chairman suggested that it might be useful for the FBU to have a word with their local representatives in Mid and West Wales.

6. **Dates of Future Meetings**

20 November 2007
20 February 2008
20 May 2008
20 August 2008

***DCLG
September 2007***

Attendees

| | |
|----------------------------|----------------|
| Martin Hill (Chairman) | DCLG |
| Andy Boorman | DCLG |
| Nitin Bhayani | DCLG |
| Anthony Mooney (Secretary) | DCLG |
| Jim Preston | SPPA |
| Ray Jennings | LGA |
| Fred Walker | LGA |
| Terry McGonigal | NIFRS |
| Erika Beattie | DHSSPSNI |
| Jason Pollard | Welsh Assembly |
| Julia Letton | Welsh Assembly |
| Dean Mills | FBU |
| Doug Christie | Thompson's |
| Ian Hayton | CFOA |
| Jenny Amos | RFU |
| Tristan Ashby | RFU |
| Chris Large | APFO |
| Glyn Morgan | FOA |

Apologies

| | |
|----------------|------------|
| Eunice Heaney | Consultant |
| Bertie Kennedy | DHSSPSNI |
| Matt Wrack | FBU |
| Andy Dark | FBU |
| Tam Mitchell | FBU |
| John Barton | RFU |
| Ivan Walker | Thompson's |
| Will Davies | ALAMA |

ILL HEALTH RETIREMENT – CHRONOLOGY

4 May 1999

Lockwood/McCalman Judgment in the High Court confirming that members permanently unfit for operational duties who are re-deployed to non-operational duties are thereby retired on grounds of ill health and entitled to an ill health pension (and an injury award if due to service). Based largely on the definition of ‘regular firefighter’ which determines those who can join and remain in the scheme.

9 May 2000

PSC(00)3 issued by Home Office to members of the Pensions Sub-Committee (PSC) and others listed. To be discussed at PSC on 4th October 2000.

The following key questions are identified:-

(i) The definition of “regular firefighter” so that it includes whole and part-time firefighters. The scope of the definition in the 1992 Pension Scheme Order was limited by the decision of the High Court in the cases of Lockwood and McCalman. It is for consideration whether any amended definition should provide for entry to the Pension Scheme only for those appointed “on terms under which he/she is for may be required to engage in firefighting” but thereafter should permit retention of the services of a firefighter on non-operational duties at the discretion of the Chief Fire Officer (ie. to restore the position to what it was assumed to be before the Lockwood/McCalman decisions). Amendment to Rule A4 may be appropriate as an alternative to amendment to the Schedule 1 definition to allow a person originally appointed on a firefighter contract but who may no longer be called upon to perform such duties.

Recommendation 19 of the report “Fit for Duty? Seeking a Healthier fire service” deals also with the need to remove the global requirement for operational fitness and substitute a role-related medical requirement.

30 June 2000

Lockwood/McCalman Judgment in the Court of Appeal refusing the appeal and upholding the High Court Judgment.

17 July 2003

ODPM issues FSC 9/2003 opening consultation on a number of amendments to the FPS including an amendment to the definition of ‘regular firefighter’.

The introduction confirmed the proposals included:

A change in the definition of firefighter allowing people to remain in the pension scheme if they undertake roles other than fire fighting. At present, a firefighter must

be fit to engage in fire fighting to stay in the scheme. This has been a barrier to the retention of those firefighters who are able to offer other skills to the service after an earlier career involving fire fighting. This change will not affect a firefighter's conditions of service; the aim is not to retain people who are unfit for all operational duties. It is designed to enable an employer to continue to draw on the experience of trained firefighters, who may no longer undertake fire fighting duties and enable firefighters to stay in the scheme and receive the benefits that it offers.

The proposal was consistent with this:

Definition of "regular firefighter" - To amend the definition or "Regular Firefighter" to include: wholetime and part-time regular firefighters; and persons performing roles appropriate to their ranks, which may no longer include engaging in firefighting, so that they may continue as members of the FPS.

30 September 2003

Consultation ends

Early 2004

Fire Service Circular 14/2004. Date not specified on the circular but it is clear from the contents that it pre-dates June 2004.

This is the ODPM response to the consultation attaching a final draft and explanatory note. Consistent with the 2003 consultation, the explanatory note refers to the changes to the FPS including:

A change in the definition of firefighter allowing people to remain in the pension scheme if they undertake roles other than fire fighting. At present, a firefighter no longer engaged in full operational duties is unable to remain in the scheme.

28 July 2004

Statutory Instrument making the amendment laid before Parliament. The explanatory memorandum includes:

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

7. Policy background

7.1 Changes to the Firemen's Pension Scheme (the "FPS") are needed to meet commitments made in the White Paper "Our Fire and Rescue Service" (Cm 5808) in relation to ill-health retirement. These changes are as follows:

□ To broaden the definition of "firefighter" to allow a firefighter, who is no longer fit enough to engage in operational duties, to remain in the FPS rather than be retired with an ill-health pension. Such firefighters could be deployed on a range of

other duties, including community safety. The current definition is one of the causes of the high level of ill-health retirements amongst firefighters.

7.4 All amendments have been the subject of consultation in accordance with section 26(6) of the Fire Services Act 1947. In addition, regular updates have been given to scheme members and information has been posted on the ODPM website.

8. Impact

8.2 The impact on the public sector is that it will increase the flexibility available to fire and rescue authorities to employ regular firefighters on part-time duties, and allow them to retain in service staff who, whilst not fit for operational duties, are capable of doing other appropriate work. There are potential savings in costs as the amendments will help fire and rescue services improve their management of ill-health retirements and will enable also the retention of trained and experienced staff who wish to work part-time rather than whole-time.

July/September 2004

Fire Service Circular 30/2004. Undated but the contents confirm this was issued after 28 July 2004 and before 13 September 2004. The circular includes:

The Firemen's Pension Scheme (Amendment) Order 2004 was laid before Parliament on 28th July and will come in to force on 13th September 2004. This circular provides background, details of the amendments and advice and guidance on implementation which will need to be actioned by Fire and Rescue Authorities and their human resources and pension scheme administrators .

The key changes include:

A change in the definition of firefighter allowing members who are unfit for operational firefighting duties to remain in the pension scheme if they undertake roles other than fighting fires provided there is no break in continuity of appointment. At present, a firefighter who is permanently disabled for firefighting must be retired and the Fire and Rescue Authority(FRA) have no discretion to refuse to do so. This amendment comes into effect on 13 September 2004. It is our view that this change cannot be applied to scheme members who have retired before that date (i.e. whose pensions are already vested). It should also help FRAs make any "reasonable adjustment" required by the DDA.

This amends the definition of "regular firefighter" in the Glossary of Expressions so that it can mean a whole-time or part-time member of a brigade, but would exclude a retained or volunteer member. This amendment also allows a regular firefighter who is appointed on terms under which he or she is, or may be, required to engage in firefighting to remain eligible for the FPS if disablement means that the person can no longer undertake operational duties but would still be fit, and is required, to undertake other duties of his/her role.(There is a provision that there should not be a break in continuity of appointment.)

(a) Amendment to the definition of "regular firefighter" (Schedule 1, Part 1)

Eligibility for full membership of the FPS is limited to regular firefighters only. The definition of "regular firefighter" includes a requirement to engage in firefighting.

This remains a term of eligibility for joining the FPS. However, the definition has been amended to allow a firefighter who subsequently becomes permanently disabled for firefighting while remaining fit for other related duties to continue as a member of the FPS. This is on condition that there has been no break in service. Consequently if a FRA are of the view that the retention of a firefighter would be of value to the service, redeployment to other duties, as appropriate to the role of a firefighter, should be considered and would be allowable under FPS rules. If the FRA cannot offer other employment, fitness to perform other duties would not be relevant and the person may be retired with an ill-health award.

4 September 2006

Firefighters Pension Scheme Circular 11/2006 was issued providing:

The Firemen's Pension Scheme (Amendment) Order 2004

1. Guidance in section (a) Annex B of Fire and Rescue Service Circular 30-2004 sets out the consequence of the amendment to the definition of "regular firefighter" in Schedule 1, Part 1 (Glossary of expressions) of the Firefighters' Pension Scheme (FPS). Since the guidance was issued, the Fire and Rescue Service have responded positively to the requirement for fitness for other related duties in addition to engaging in firefighting to be considered when assessing whether a person is permanently unfit under Rule A10 and accordingly, over the last 12 months, we have revised the guidance which we have been giving to fire and rescue authorities when asked about the consequences of the amendment.

2. In the circumstances, we are amending the guidance set out in the circular and the following paragraph, which more accurately reflects the provisions of the FPS, should be substituted:-

*"(a) Amendment to the definition of "regular firefighter" (Schedule 1, Part 1)
Eligibility for full membership of the FPS is limited to regular firefighters only. The definition of "regular firefighter" includes a requirement to engage in firefighting and to perform other duties as appropriate to his role as a firefighter (other than, or in addition to, engaging in firefighting). The test in assessing whether a regular firefighter ought to retire on the grounds that he is permanently disabled under Rule A15 is whether he is permanently disabled for firefighting and for performing other duties appropriate to the role."*

This was a complete and highly significant change of position. On this basis, no member can receive an ill health or injury pension unless they are so disabled that they can do none of the duties within their role map, whether a job restricted to those duties is provided or not. Given that duties within the role maps include wholly sedentary work, such as desk duties, a seriously disabled firefighter will be denied an ill health/injury pension because he/she can undertake desk duties which are not, in fact made available. Ill health pensions, including injury awards for those injured on duty, will be very rarely available on this new test, if at all.

17 January 2007

At the Firefighters Pension Committee, DCLG are challenged on Circular 11/2006. The response of the Chairman, for DCLG was:

The Chairman said that the guidance given in circular 11/2006 clarified DCLG's view of the pension scheme. It could not be an interpretation of the Scheme. The decision of whether or not to retire a member on an ill-health pension remained with the FRA. The question of whether a member, who does not qualify for ill-health retirement, can be dismissed if no suitable job is available was an employment matter and not for the pension schemes.

September 2007

Guidance for Independent Qualified Medical Practitioners (IQMPs) providing an opinion on permanent disability, fitness for regular work, qualifying injury and degree of disablement.

When the IQMP finds that although the firefighter is permanently disabled for operational firefighting duties but is capable of other duties within his/her role, the FRA will need to consider redeployment. Whether or not a job is available for the member is not a matter for the pension scheme and should not be taken into account by the IQMP when reaching his opinion.

*A firefighter is permanently disabled if he/she is medically unfit to carry out **all** the duties expected of him/her as listed in the role map for his/her role (rank). Provided the member can carry out one of the duties of the role he/she cannot be permanently unfit. The decision about permanent disablement will be specific to the role of the firefighter, so it is important for the IQMP to be familiar with the different requirements of the various roles within the Fire and Rescue Service.*