

FIREFIGHTERS' PENSION COMMITTEE

NOTE OF THE 25th MEETING OF THE FIREFIGHTERS' PENSION COMMITTEE HELD ON 20th NOVEMBER AT ELAND HOUSE, BRESSENDEN PLACE, LONDON

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

1. Introduction

1.1 The Chairman welcomed Sean Starbuck of the FBU who had replaced Dean Mills, and Alyson Hall from Greater Manchester FRA, who was attending as part of the LGA team.

2. Minutes of the 24th FPC meeting

2.1 The Chairman advised members that the minutes circulated had been revised to reflect comments submitted by Doug Christie of Thompsons.

2.2 Will Davies submitted comments regarding the minutes. These are attached at Annex B.

2.3 The minutes of the 24th FPC meeting were agreed, subject to these amendments.

3. Matters arising from the 24th FPC meeting - FPC(07)13

3.1 The Chairman introduced committee paper FPC(07)13 - 'Matters arising from the 24th FPC meeting'.

Ill-Health related Issues

3.2 The Chairman said that this issue had been noted as an agenda item and would be discussed later.

FPS and NFPS Amendment Orders

3.3 The Chairman explained that there had been a delay in the completion of the FPS and NFPS amendment orders because the CLG lawyer working on them had been on bereavement leave. He expected the amendment orders to be ready for Ministers signature shortly.

Board of Medical Referees: renewal of contract

3.4 The Chairman advised the FPC that three 'pre-qualification questionnaires' had been submitted from potential contractors. All three were considered capable of delivering the contract and therefore it had not been necessary to set up an Evaluation Panel to assess applicants' eligibility. The contract will be going out to tender in the next few weeks.

Age Discrimination

- 3.5 There were no further developments to report regarding a possible action instigated by the Manchester solicitors who were claiming that firefighters who had joined the FPS when they were 18 or 19 years' of age were being discriminated against because FPS rules required them to work more than 30 years before they become entitled to a pension.
- 3.6 Sean Starbuck confirmed that the FBU had nothing further to report on this issue.

Personal Pension Schemes – Cash Equivalent Transfers

- 3.7 Sean Starbuck said that he had contacted their Mid and West Wales FBU representative and could confirm that there was an independent financial adviser who had approached firefighters to advise them about transferring their pension benefits into personal pension schemes. He said that he was unsure of the scale of the concern but had requested numbers.
- 3.8 The Chairman informed members that he understood that colleagues in the Home Office were considering whether to issue advice regarding the transfer of protected pension benefits out of occupational pension schemes. CLG would monitor their actions and decide whether it would be appropriate to issue a similar circular to the Fire and Rescue Service.

4. Entitlement to Ill-Health Retirement – FPC(07)14

- 4.1 The Chairman invited Ian Hayton to introduce committee paper FPC(07)14 which had been submitted on behalf of CFOA. He said that Ministers would look at the issue of ill-health retirement entitlement from a general pension policy perspective. Any discussion generated by committee paper FPC(07)14 would be relayed to Ministers to assist them in their considerations.
- 4.2 Fred Walker asked for it to be noted that due to the late circulation of the paper he would not be able to give a full response on behalf of the employers.
- 4.3 Ian Hayton advised the FPC that any determination of ill-health retirement is a matter for FRAs and should be made in accordance with the pension scheme regulations. CFOA had been asked to consider the options that are available as an alternative to ill-health retirement. The options, as outlined in the paper, had been prepared in discussion with HR advisers, as a basis for discussion to see if an agreement could be reached between stakeholders. An initial paper had been prepared but had not been circulated.
- 4.4 Ivan Walker asked about the initial paper. The Chairman said that the paper was a statement by CFOA of its position and had not addressed the issues. It was not the business of CLG to circulate such a paper.

- 4.5 Ivan Walker suggested that it should be an objective of the FPC to obtain a common agreement between stakeholders and therefore it would be helpful to have sight of the initial paper if it represented CFOA's position.
- 4.6 Ian Hayton agreed to circulate the initial paper to members. He reported that it was CFOA's view that the arrangements following the CLG guidance issued in 2004 should be strengthened to include reasonable adjustments and redeployment. He concluded by saying that in cases where no appropriate redeployment opportunities can be offered to a firefighter, the member should be ill-health retired with immediate payment of pension.

ACTION: Ian Hayton to circulate CFOA's initial paper regarding entitlement to ill-health retirement to members of the FPC

- 4.7 Sean Starbuck of FBU apologised for the late circulation of their response to CFOA's paper (committee paper FPC(07)15). He explained that the FBU had been told by DCLG that the issue of ill health retirement would not be put on the agenda for the FPC. The FBU's view is that the issue of the Compensation Scheme suggested by CFOA would be a matter for the NJC. But because the CFOA paper had been circulated (very late in the day) the FBU felt that it was important to clarify their position in writing before the meeting. The FBU believes that the proposal within the CFOA paper is inflammatory and Matt Wrack has written to Sarah Messenger accordingly.
- 4.8 The FBU's position was to revert back to the position established by the 2004 guidance. The CFOA proposal for a compensation payment was unacceptable because it would only postpone hardship for up to 2 years.
- 4.9 Glyn Morgan said that it was FOA's view that arrangements should revert back to the position following the CLG guidance issued in 2004. FOA accepted that the 2004 position should be supplemented with additional guidance on redeployment and reasonable adjustment. FOA would not accept the dismissal of a firefighter where no redeployment position was available. FOA welcomed the CFOA paper as it encourages discussion regarding this issue.
- 4.10 John Barton said that the RFU were fully aware of the problems that exist. The loss of primary employment can also be an issue for retained firefighters. He would want to analyse the options identified in CFOA's paper and discuss them with the RFU Executive. The RFU welcomed the CFOA paper as a basis for consideration.
- 4.11 Tristan Ashby of RFU said that it was clear that all the union stakeholders were not happy with the current situation.
- 4.12 Chris Large confirmed that it was APFO's view that the arrangements should revert back to the position following the guidance issued by CLG in 2004.

4.13 It was agreed that the various staff association representatives would clarify, in writing, the position of their respective organisations in relation to entitlement to ill-health retirement.

ACTION: Staff association representatives to clarify, in writing, the position of their respective organisations in relation to entitlement to ill-health retirement

4.14 The Chairman confirmed that CLG would provide advice to Ministers regarding the regulations of the pension schemes and the guidance issued by CLG. The issue for Ministers to consider was whether CLG guidance accurately reflected the amendments made in 2004. If Ministers decided that CLG guidance did not accurately reflect the provisions of the Scheme, they would have to decide whether amended guidance was necessary.

4.15 Sean Starbuck highlighted FBU's concerns about the position of members who had already been retired in accordance with the 2004 guidance and were due to have their ill-health pensions reviewed. Such reviews were likely to be carried out in accordance with the 2006 guidance, which, in his view, removed the FRA's discretion to ill-health retire a firefighter where a redeployment opportunity was not available. The result could be that a firefighter would be left with no pension and no job.

4.16 The Chairman did not agree. When reviewing an ill health pension, if the FRA determined that the member was no longer permanently disabled, it was required to offer the member re-employment. If the FRA could not offer the member re-employment the member was entitled to retain their ill-health pension. He stressed that the update in guidance in 2006 did not have any effect on the regulations of the pension schemes. The updated guidance was issued to remind FRAs that when determining whether a firefighter was permanently disabled the FRA had to assess whether they were capable of undertaking firefighting duties and other duties of the role, such as community fire safety duties.

4.17 Will Davies said that he thought that agreement on the amendments to the pension scheme regulations in 2004 was reached on the condition that a firefighter could be ill-health retired where no redeployment opportunity could be offered. Glyn Morgan supported this view.

4.18 Sean Starbuck of the FBU referred to the incidence of ill-health retirement in the Fire and Rescue Service. In the past it was high but said that the amendments made to the scheme in 2004 had the desired effect of reducing these to an acceptable level.

4.19 The Chairman said that the incidence of ill-health retirements in the main public sector schemes was averaging around 3 per 1000 employees. He said that whilst ill-health retirements in the Fire and Rescue Service had reduced from approximately 18 per 1000 employees in 2001/02, they were 9 per 1000 in 2005/06, still well above the average.

4.20 Following requests from members it was agreed CLG would provide the FPC with the statistics showing the incidence of ill-health retirements in the FRS over the last 3 years.

ACTION: DCLG to provide members with the statistics showing ill-health retirements in the Fire Service over the last 3 years – see Annex C.

4.21 Sean Starbuck said that the FBU were advising members to try to avoid being considered for ill-health retirement and advising those who were due to have their ill-health pensions reviewed or who were awaiting an appeal to apply for an adjournment until the current issue had been resolved. He asked for the FPC to agree that until some formal solution had been found that FRAs should revert to the position in 2004 when there was discretion to ill-health retire a firefighter in cases where no redeployment opportunity could be offered. The FBU was having to pay an amount equivalent to the pensions lost by the London firefighters who were the subjects of the current judicial review proceedings because the employer was concerned that any payments they made would be ultra vires. That was a totally unsatisfactory position

4.22 The Chairman responded that the position had not changed since 2004. The 2006 guidance simply reminded FRAs that they had to consider permanent unfitness to undertake other duties appropriate for the role as well as firefighting. CLG guidance was not statutory guidance and therefore, if FRAs were satisfied that they had discretion, the guidance could not have changed that position. He also pointed out that firefighters do not apply for ill-health retirement and that there was no process for adjourning reviews.

4.23 Alyson Hall explained that part of the problem was that HR departments are not taking timely decisions with regard to sick absence management and, as a result, there may be misunderstanding of the processes leading to possible ill-health retirement. As an HR manager it was her job when an employee went on sick leave to consider what strategies were available to assist a return to work. These included making adjustments to the employee's current job, returning on reduced hours etc. If a return was not found to be possible then options for exit needed to be considered. Whether or not a pension was payable could only be determined once a decision had been made to retire the person.

4.24 Will Davies referred to a hypothetical situation where a firefighter becomes ill but not to the extent that he/she is permanently disabled as he/she can undertake some minor duty relating to the role of a firefighter. He said that if this firefighter could not be offered a redeployment opportunity he/she would be in danger of losing their job. The Chairman responded by saying that the pension schemes expect and require all decisions, including medical judgements made by IQMPs, to be reasonable. He said that the role of firefighter could be broken down into two main elements, operational firefighting and other roles including community fire safety. IQMPs should know this and make their judgements accordingly.

- 4.25 Fred Walker said that the expectation was that an IQMP would be required to apply a test of reasonableness when assessing a firefighter's ability to either undertake operational firefighting or community fire safety work. In his view current legislation allows for this.
- 4.26 Sean Starbuck said that, as the current guidance stands, it can be interpreted that "if a firefighter is able to hold a pen then they cannot be ill-health retired".
- 4.27 Fred Walker replied that if this was actually how FRAs and IQMPs were interpreting the legislation then this was never the intention.
- 4.28 Ivan Walker pointed out that under the new funding arrangements, the cost of any ill health retirement fell to be met by the FRA and not the DCLG, which Ray Jennings concurred with. On that basis, any issues relating to the criteria for ill health retirement should be agreed between the FRAs and representative bodies and were not an issue for the DCLG.
- 4.29 The Chairman concluded by inviting members to comment on CFOA's paper. He said that these comments would be brought to the attention of Ministers so that they can make a decision on the pensions' perspective of the issue. The employers would be required to look at the HR perspective of the issue.

ACTION: FPC members invited to submit comments on paper FPC(07)14 by end of November.

5. **Any Other Business**

Updated Guidance on CPD and LSI amendments

- 5.1 The Chairman confirmed that when the amendment orders were made and laid, CLG would publish and issue updated guidance, hopefully by the end of the month. He said that the guidance would include 2 main updates:
- (i) On the question of "best of the last 3 years rule" (average, or final, pensionable pay), the original proposal was that where a firefighter retired after 30th September 2007 then average pensionable pay would have to exclude any LSI payments and benefits related to LSI would be in the form of an additional pension benefit only. Following consultation, we have accepted that some firefighters retiring after 30th September might be disadvantaged by this and we have asked for the amendment order to be re-drafted to allow for the option of pension calculated based on average pensionable pay including LSI if this is more beneficial. This will mean that the best of the last 3 years will apply if one of the years gives a better outcome than pensionable pay minus LSI + APB; and
 - (ii) Where a firefighter is able to retire under Rule B1 that the APB should be payable from date of retirement. This was not

reflected in the draft FPS amendment order but we have asked for it to be included in the re-draft.

- 5.2 The Chairman concluded the meeting by wishing Ray Jennings a happy retirement from the Committee.

6. Dates of Future Meetings

20 February 2008

20 May 2008

20 August 2008

29 November 2008

DCLG

November 2007

Attendees

Martin Hill (Chairman)	DCLG
Andy Boorman	DCLG
Nitin Bhayani	DCLG
Anthony Mooney (Secretary)	DCLG
Jim Preston	SPPA
Fred Walker	LGA
Alyson Hall	LGA
Ray Jennings	LGA
Erika Beattie	DHSSPSNI
Sean Starbuck	FBU
Ivan Walker	Thompsons
Ian Hayton	CFOA
John Barton	RFU
Tristan Ashby	RFU
Chris Large	APFO
Glyn Morgan	FOA
Will Davies	ALAMA

Apologies

Eunice Heaney	Consultant
Bertie Kennedy	DHSSPSNI
Terry McGonigal	NIFRS
Jason Pollard	Welsh Assembly
Julia Letton	Welsh Assembly
Matt Wrack	FBU
Andy Dark	FBU
Tam Mitchell	FBU
Jenny Amos	RFU

Comments submitted by Will Davies of ALAMA

Will Davies of ALAMA commented that minute 3:11 could give rise to a misleading impression of ALAMA's position on the point at issue. For clarification, he explained that the question of whether ALAMA's views on FPSC 11/2006 should be submitted in the IQMP Guidance consultation exercise, was discussed by ALAMA's Fire Steering Committee. The Committee agreed that interpretation of the statutory definition of the role of a regular firefighter, did not involve medical issues and that this aspect of the IQMP Guidance was primarily a matter for the CLG to determine. For this reason, ALAMA did not submit any comments on those aspects of the IQMP Guidance which reflected FPSC 11/2006. However, FPSC 11/2006 does have implications for Medical Advisors and as a point of principle, ALAMA believes that CLG should give due consideration to the Association's views. Furthermore ALAMA's representation on the FPC provides a suitable route for such views. ALAMA's comments on the issues surrounding FPSC 11/2006 were recorded in the revised minute 6.1 of the 19th meeting, minute 2.1 of the 22nd meeting and minute 3.8 of the 23rd meeting. ALAMA's position, as stated in these minutes remains unchanged. With regard to further efforts towards achieving a satisfactory solution, ALAMA would welcome the opportunity to contribute.

**Ill-Health Retirements in the Public Service Sector -
Table A – Number of ill-health retirements (per 1000 employees)***

	Year						
	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07
Police Pension Scheme (1987)¹	9.8	8.8	6.2	3	3	N/A	N/A
Principal Civil Service²	4.3	4.6	3.3	4.0	4.1	3.9	3.1
Prison Service³	5.1	5.6	5.3	5.0	3.5	3.3	2.9
Teacher's⁴	N/A	N/A	4.2	4.3	3.3	3.1	N/A
Armed Forces⁵	9.3	9.2	9.3	8.9	9.6	N/A	N/A
NHS⁶	4.7	4.1	3.8	3.0	2.8	2.3	2.0
Local Government (England)⁷	N/A	6.1	4.5	4.0	3.5	2.9	2.6
Fire Service⁸	N/A	17.8	16.8	15.3	10.3	9.3	[4.5]**

* - for the purposes of these statistics it is assumed that all employees are members of their respective public sector pension scheme

** - Provisional on basis of limited data

¹ HOC Hansard Written Answers for 7 Nov 06 (pt 0090)

(www.publications.parliament.uk/pa/cm200506/cmhansrd/cm061107/text/61107w0090.htm)

² Statistics provided by Cabinet Office

(http://www.civilservice-pensions.gov.uk/Employer/Capita_Health_Solutions.aspx)

³ Statistics provided by Cabinet Office

⁴ Statistics provided by Department for Children, Schools and Families

⁵ Statistics provided by Ministry of Defence (www.dasa.mod.uk/natstats/natstatsindex.html)

⁶ Statistics provided by Department for Health (NHS Resource Accounts)

⁷ Statistics provided by Department for Communities and Local Government (DCLG)

⁸ FRS Operational Statistics Bulletin for England

(www.communities.gov.uk/publications/fire/fireserviceoperational)