

FIREFIGHTERS' PENSION COMMITTEE

NOTE OF THE 27th MEETING OF THE FIREFIGHTERS' PENSION COMMITTEE HELD ON 20th AUGUST 2008 AT ELAND HOUSE, BRESSENDEN PLACE, LONDON

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

1. Introduction

- 1.1 The Chairman welcomed everyone to the meeting. He introduced Brian Wallace of COSLA and Alf Mason who was attending as an LGA pensions' adviser.

2. Minutes of the 26th FPC meeting

- 2.1 The Chairman advised members that paragraph 4.5 of the draft minutes which were originally circulated had been revised to reflect comments submitted by Andy Dark of FBU.
- 2.2 The minutes of the 26th FPC meeting were agreed, subject to FBU's amendments.

3. Matters arising from the 26th FPC meeting - FPC(08)3

- 3.1 The Chairman introduced paper FPC(08)3 - 'Matters arising from the 26th FPC meeting'.

Consolidation of the FPS 1992 Order

- 3.2 The Chairman advised members that following the last meeting some comments on paper FPC(08)2 had been received. CLG were currently working through the comments and would prepare instructions for the Department's Legal Advisers in due course.
- 3.3 Glyn Morgan indicated that he intended to submit comments on behalf of the FOA shortly.
- 3.4 Fred Walker stressed that the exercise was a consolidation of the existing provisions and did not constitute a review of FPS 1992. The Chairman confirmed that there was no intention of changing the provisions and that it was an ongoing arrangement to tidy up the regulations. If significant changes were identified as being required then these would require consultation and a separate amendment order.
- 3.5 Ivan Walker made reference to the restriction of the amount of commuted lump sum to 2.25 times pension for those who retire prior to reaching normal pension age and who have not accrued 30 years' pensionable service. He said that he had raised this previously at an earlier meeting and suggested that the restriction should be removed so that all firefighters can commute up to ¼ of their pension regardless of age and service.

ACTION: CLG to consider, and respond on suggestion that Rule B7(5) should be amended to remove the limit on the commuted lump sum for those who retire prior to reaching normal pension age and who have not accrued 30 years' pensionable service.

Extending Eligibility Criteria for NFPS Membership

- 3.6 Des Prichard referred to CLG's letter to APFO on 1 May 2008 regarding the eligibility criteria for NFPS membership, and said that the issue may be less important because of the announcement of a National Graduate Entry Scheme (NGES) for the Fire and Rescue Service: this had the support of CLG Ministers. It was envisaged that NGES recruits would spend a period as firefighters. The design of the scheme was currently being undertaken by a working group, of which he was a member, and suggested that their work would need to be considered by the FPC. The Chairman noted that the NGES would be substantially different from the present arrangements for recruiting people direct into more senior management roles, where there was eligibility to join the LGPS; and the NGES working group should consult with the Firefighters' Pensions team at an early stage to ensure that any pension issues relating to the NGES were properly considered.
- 3.7 Des Prichard pointed out that CLG's letter referred to the 'continuing fitness standards required for firefighting'. He said that whilst there were certain fitness criteria that a firefighter needed to satisfy, with consideration given to flexibility and reasonable adjustments to comply with disability discrimination legislation, it was his understanding that there was currently no definitive set of physical standards that firefighters had to satisfy.
- 3.8 Sean Starbuck mentioned that the FBU were still seeking the extension of eligibility for NFPS membership to include control room staff. The Chairman said that the work of the Working Group on Emergency Fire Control had been concluded and control room staff were not eligible for NFPS membership. The CLG considered this particular matter closed.

Entitlement to Ill-Health Retirement

- 3.9 This was included as item 4 of the agenda (please refer to section 5 of the minutes).

Formal Grievance

- 3.10 The Chairman reported that CLG had received a letter from Laytons Solicitors initiating a formal grievance on behalf of approximately 250 named firefighters. He said that the grievance challenged the FPS 1992 on the grounds that the requirement for firefighter members who had made an election not to pay pension contributions (optants-out) to recommence paying contributions prior to their 45th birthday if they wanted to resume their scheme membership contravened the Employment Equality (Age Regulations) 2006. CLG were considering the issue and would keep members updated.

- 3.11 It was agreed that CLG would circulate a copy of CLG's response to the formal grievance letter when finalised.

ACTION: CLG to circulate a copy of their response to the formal grievance letter to members when finalised.

4. Revised Commutation Factors – Oral Update

- 4.1 The Chairman said that the revision of the FPS 1992 commutation factors by GAD and their application to pensions that came into payment on or after 1st October 2007 had generated a significant amount of correspondence. The majority of the queries were from firefighters who had retired within the last 4 or 5 years and who felt aggrieved that the new factors did not apply to their pensions. He confirmed that CLG had raised the subject of a review of the factors with GAD in 2005 during discussions about the NFPS 2006 factors. GAD subsequently wrote to CLG in August 2006 setting out the assumptions which it proposed to use for the review. Following discussions between GAD, CLG, Home Office (in respect of the Police Pension Scheme) and HM Treasury the final revised commutation package, including the new factors, emerged in May 2008. GAD certified that it would be appropriate to apply revised commutation factors to all pensions that came into payment on or after 1st October 2007. The Chairman said that he understood that the Police Federation had applied for Judicial Review of the Home Office decision and that the matter was now in the hands of the Courts. CLG would not want to comment further until the outcome of any judicial review was known.
- 4.2 Alf Mason said he believed that firefighters from Cheshire were currently mounting a campaign to challenge the decision to restrict the application of the revised commutation factors to pensions that came into payment on or after 1st October 2007.
- 4.3 Ian Hayton asked for clarification on why the 1st October 2007 was chosen as the effective date. The Chairman said that GAD with their actuarial expertise had certified that the old FPS 1992 commutation factors were valid for pensions that came into payment on or before 30 September 2007.
- 4.4 Ivan Walker referred to GAD's letter dated August 2006 and asked why if, at that time, it was considered necessary to review the commutation factors the revised factors were not applied retrospectively to August 2006. The Chairman said that the letter was concerned with the assumptions which should inform any review of the factors, it did not provide worked factors and no commutation factors had been worked out at that point.
- 4.5 Ivan Walker expressed the view that, under guidance issued by the Institute of Actuaries, pension schemes were advised to review factors every 3 years. In the case of the FPS 1992 it appeared that the revision of the commutation factors was initiated by a CLG approach to GAD. The Chairman responded that the initiative to

review the factors had come out of discussion of factors for the NFPS and reflected advice which GAD had given to CLG.

- 4.6 Sean Starbuck asked for a copy of the GAD letter that was sent to CLG in August 2006. The Chairman said that GAD had not given their consent for the letter to be released into the public domain. He suggested that FBU should consider making the request direct to GAD.
- 4.7 Sean Starbuck also noted that revised commutation factors had not been applied for the FPS in Scotland and that the old factors were still being used. Jim Preston said that the factors for police and fire had not yet been released in Scotland and, until they were, the old factors were still being applied. The Scottish Finance Minister was currently seeking funding from HM Treasury to cover the additional costs. Once the funding issue had been settled the revised commutation factors would be applied, presumably retrospectively from 1st October 2007, subject to the outcome of the Police Pension Scheme judicial review.
- 4.8 Ivan Walker highlighted the fact that there would be tax implications for members who obtained backdated commutation payments after 12 months of their pension coming into payment. HMRC taxation rules prescribe that in order for the commuted lump sum to remain non-taxable it needed to be paid within 12 months of the date of the crystallisation event after which it would become taxable at a rate of 55%.
- 4.9 Des Prichard said that the tax implications for firefighters in Scotland could become a real issue and it would be unacceptable for firefighters in Scotland to be treated differently to those in England and Wales.
- 4.10 The Chairman concluded by saying that the effect of the revised commutation factors was cost neutral over the term of a member's pension as the commuted lump sum represented the actuarial value of the pension given up by the member. However, the increase in the commutation factors gave an indication of how much the cost of the FPS scheme had risen and he would expect this to be reflected in the valuation exercise which was currently being undertaken by GAD. Subject to the outcome of the valuation, it was likely that to ensure Scheme viability, additional costs would have to be shared by scheme members and the employers through increased contribution rates. He also thought that, again to ensure viability, there was a need to review the basis on which the commuted lump sum was determined and to move, for example, to a fixed rate in line with Part 3, Rule 9 of the NFPS. If this was done, he assumed that it would be necessary to protect commutation in respect of service up to the point of the change on the basis of the existing arrangements.

5. FPS III-Health Review Group Work – Oral Update

- 5.1 The Chairman made reference to the work of the III-Health Review Group (IHRG) which had members from all the FPC representative

organisations. He said that the FBU had lodged an appeal against the recent High Court judgement in the case of the three London firefighters, citing some of the IHRG proposals in their grounds. It was expected that the case would be heard by the Court of Appeal in January 2009. CLG's Counsel had advised against publishing the circular and guidance pending the Court of Appeal's decision.

5.2 Sean Starbuck suggested that there were ill-health cases that had been "parked in the system" in anticipation of the outcome of the IHRG work and a new CLG circular and guidance relating to ill-health retirement. He asked what should be done in these cases. The Chairman responded by saying that this was a matter for Fire and Rescue Authorities. The work of the IHRG had been placed on the Firepensions website and was accessible to all but it had been made clear throughout the Group's discussions that any new circular and guidance would, when issued, be informal (non-statutory); the draft circular made clear that an authority must act within the legal framework of the regulations and would wish to take their own legal advice on individual cases. The rules of the scheme still applied and until the Court of Appeal delivers its judgement on the case, the correct interpretation of the relevant FPS 1992 regulations must be that contained in the High Court's recent judgement. There was no reason, therefore, for cases to be delayed.

5.3 Ivan Walker said that it was his understanding that the IHRG had reached a position that had been accepted by all stakeholders and had agreed the content of the new CLG circular and guidance. The Chairman explained that the FBU's decision to appeal against the High Court's decision had impacted on the course of events and the clear advice to the Department was that the circular and guidance should not now be issued because until the Court of Appeal gives judgement it would not be possible to determine whether the new guidance reflected the law. Sean Starbuck informed the committee that CLG were aware that the FBU were appealing the Judicial Review decision when the circular and guidance were being finalised and that a meeting with CLG had taken place immediately after the judgement was released where the reasons for the decision to appeal were explained. In brief the reason for the appeal was that any CLG guidance is informal and could be disregarded, but the judgement could not. The FBU were advised at this meeting that the circular would be released when the guidance to IQMPs document was finalised. The Chairman said that CLG had not been aware of the intention to appeal until the appeal process had been initiated by the appellants at the end of May.

6. Any Other Business

6.1 No other items of business were raised.

7. Dates of Future Meetings

19 November 2008
26 February 2009
28 May 2009
27 August 2009

***Communities and Local Government
August 2008***

Attendees

Martin Hill (Chairman)	DCLG
Andy Boorman	DCLG
Anthony Mooney (Secretary)	DCLG
Jim Preston	SPPA
Bertie Kennedy	DHSSPSNI
Fred Walker	LGA
Alf Mason	LGA
Brian Wallace	COSLA
Terry McGonigal	NIFRS
Sean Starbuck	FBU
Ivan Walker	Thompsons (Advisor to FBU)
Des Prichard	APFO
Ian Hayton	CFOA
Glyn Morgan	FOA
John Barton	RFU
Tristan Ashby	RFU
Dr Will Davies	ALAMA

Apologies

Craig Thomson	FOA
John Terry	COSLA
Eunice Heaney	Consultant