

FIREFIGHTERS' PENSION COMMITTEE

CONSULTATION ON PENSIONABLE PAY

Following discussions at the 32nd meeting of the Firefighters' Pensions Committee (FPC), FPS Circular 11/2009 was issued to stakeholders detailing concerns over the treatment of pay for pension purposes and invited comments on options for the future. The options were developed after initial consultation with the FPC through CLG papers FPC(09)4 and (09)6.

A total of 28 responses were received, broken down as follows:

Fire and Rescue Authorities - 21
Employee representative groups - 2
Scheme members - 1
Devolved administrations - 3
Others - 1

The circular made clear that any comments or suggestions on the issues would be welcomed but particularly sought views on two "headline" options and five other specific proposals.

Headline options:

Option 1: Introduce an approvals process to assess and mitigate against cost implications for the schemes.

Option 2: Adopt Additional Pension Benefit (APB) arrangements similar to those introduced in 2007 for CPD payments.

Specific proposals:

- (i) FRAs should have discretion to determine whether an allowance or emolument is pensionable;
- (ii) Additional Pension Benefits (APB) arrangements should apply to any pensionable allowances or emoluments which an FRA determines should be pensionable;
- (iii) a member of the FPS or NFPS in receipt of any allowance or emolument which has been treated as pensionable before 18 November 2009 should be entitled to have this regarded as part of pensionable pay;
- (iv) pension benefits accrued on pensionable allowances or emoluments should be protected;
- (v) arrangements for purchasing additional pension should replace those for purchasing additional service.

Details of the comments received and CLG's formal response are contained in an Annex to this paper.

Summary of responses

Headline Options:

Respondents were generally supportive of adopting option 2 (the preferred option of the FPC). However, there were some recurring concerns and questions raised over:

- i) the future treatment of allowances or emoluments that had traditionally been regarded as pensionable such as Flexible Duty Allowance, London Weighting, Temporary Promotion or Acting Up pay;
- ii) protection arrangements for accrued benefits; and
- iii) the complexity of any new APB arrangements and the administrative burden which may result.

Some respondents saw merit in the control and monitor aspects of Option 1 and two respondents suggested alternatives to the two headline options, preferring to see a definitive determination by CLG of which allowances/emoluments should be treated as pensionable and for this to be reflected in scheme rules or statutory guidance.

CLG's view is that whilst Option 1 would give some assurance that the cost of any new pension liability would be assessed and mitigated against, it would not affect existing pensionable allowances/emoluments or address existing problems. In our view, APBs offer the best option for addressing concerns about pensionability of allowances because it:

- leaves pensionability to be determined locally; and
- ensures members receive pension proportionate to their contributions.

However, we accept that there needs to be a clearer regulatory framework and, in addition to bringing forward proposals for new, simplified, APB arrangements, we will propose an amendment to scheme rules on pensionable pay.

Conclusion on Headline Options

We recognise the strength of feeling about Flexible Duty Allowance, London Weighting, and pay for temporary promotion and acting up.

We hold to the view that the pensionability of FDA is perverse as, under the terms of the Grey Book, transfer out of the flexible duty system is voluntary and employees will not be transferred from the system against their will, it is unlikely that any employee would voluntarily forego the pension benefits of FDA being part of final pensionable pay.

FDA should be treated as a temporary allowance and propose that in future (i.e., from a specified date) it should not be pensionable as part of final pensionable pay and should be pensionable, at the discretion of the employing authority, only under APB arrangements.

Our position is that pay on Temporary Promotion or, for that matter, Acting Up should not, because of its nature, be pensionable as part of final pensionable pay but should be pensionable at the discretion of the employing authority only under APB arrangements.

We would make clear, however, that we do not propose that those who are currently in receipt of FDA, or pay for temporary promotion / acting up on a pensionable basis, should be disadvantaged. Any change in status should apply to future awards (i.e. from a specified date) only.

With regard to London Weighting, we are persuaded that, because of its particular characteristics, it should be considered as a permanent emolument for the purposes of the pension schemes and should, therefore continue to be part of pensionable pay rather than within APB arrangements.

Other proposals:

i) FRAs should have discretion to determine whether an allowance or emolument is pensionable.

Most respondents strongly supported the principle of retaining local discretion over pensionability of allowances but there were some cautionary concerns expressed about whether this could lead to proliferation of new allowances or pensionability being applied inappropriately and variations between Authorities resulting in unequal treatment of employees across the service.

Our view is that APB arrangements will make FRAs more accountable for, and aware of, pension costs and should lead to them taking more care over decisions on pensionability. We will consider whether amendment to the scheme rules on pensionable pay to include prescribed parameters would be helpful.

ii) Additional Pension Benefits (APB) arrangements should apply to any pensionable allowances or emoluments which an FRA determines should be pensionable.

Again most respondents were supportive but would wish to see simplification of the APB process and an opportunity to comment on any new APB arrangements.

We are aware that existing APB arrangements are over-complicated but this is because when CPD APB was introduced in 2008 we linked it to the CPD allowance year which ran from 1st July. We will seek to simplify the new arrangements by aligning the APB year with the financial year. Proposals will be subject to consultation as part of the scheme amendment process.

iii) A member of the FPS or NFPS in receipt of any allowance or emolument which has been treated as pensionable before 18 November 2009 should be entitled to have this regarded as part of pensionable pay.

Respondents were in general agreement but there was some concern that the proposal might lead to protection being applied inappropriately or disproportionately.

Our view is that there should be recognition that those in receipt of pensionable allowances before 18th November 2009 would have expectations of how those allowances may affect their pension benefits and it would be unfair to change the position because of a change in the treatment of the allowances from that date. The 18th November date relates to the date of the FPC meeting at which it was the general view that a change to current arrangements was required. We propose that there should be a date, prescribed in the scheme amendments, from which the new arrangements should apply to new awards. We would further propose, therefore, that any allowance pensionable under the terms of Rule G1 of the FPS or Part 11, rule 1 of the NFPS, in payment before that prescribed date should be retained on the same basis as it was originally awarded. This could mean, of course, that an allowance may cease and not subsequently be reflected in final (average) pensionable pay. We consider that there is adequate protection in the schemes for this situation through the two (split) pensions provisions.

iv) Pension benefits accrued on pensionable allowances or emoluments should be protected.

Again respondents were in agreement but had concerns over having to change pension arrangements from a given date and having, thereafter, to maintain a record of the accrued benefits.

We recognise that a change in the terms under which an individual may be receiving a pensionable allowance, with the result that a pre- and post change record would need to be maintained, would be burdensome. We therefore propose that protection should be as described in iii) above.

v) Arrangements for purchasing additional pension should replace those for purchasing additional service.

Respondents were in favour.

Other Issues

Questions were raised over the role of CLG in determining whether pay, allowances or emoluments should be pensionable. It was suggested that neither CLG nor the FPC could dictate to the NJC over pension matters or change agreements on pensionability set out in the Grey Book.

As regulator of the schemes, it is for the Secretary of State to decide on matters relating to scheme rules, including whether payments, regardless of their nature, should be treated as pensionable under the schemes. In making those decisions, Ministers will consult as necessary as required by section 34(5) of the Fire and Rescue Services Act 2004. Whilst neither the FPC nor CLG can dictate to the NJC on the introduction of payments and allowances, pensionability is not a consideration for the Grey Book.

It has been suggested that this review and consultation on pensionable pay should be incorporated into the wider discussions arising from the recent valuation of the schemes. We agree that there is a relationship and that action taken on pensionable pay as a result could only be beneficial to the sustainability and affordability of the schemes. Measures taken will exert a downward pressure on scheme costs whilst being fair to scheme members. It would be relatively straightforward to measure savings in individual cases where, say, a member receives Flexible Duty Allowance on an APB basis rather than on a final salary basis, but actual overall savings to the scheme would be more difficult to calculate and likely only to emerge over a period of time.

Conclusion

On the basis of comments received, CLG will:

- draft necessary scheme amendments including the definition of pensionable pay.
- develop new, simplified, APB arrangements;
- develop purchase of additional pension arrangements;

The resultant legislation will be subject to statutory consultation.

Communities and Local Government
March 2010