

FIREFIGHTERS' PENSION COMMITTEE

NOTE OF THE 30th MEETING OF THE FIREFIGHTERS' PENSION COMMITTEE HELD ON 28th MAY 2009 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.
- 1.2 Members noted that Eunice Heaney had sent apologies once again, and asked the Chairman to convey to her their best wishes.

2. Note of the 29th FPC meeting

- 2.1 Ivan Walker asked for the minutes to reflect that he had also asked whether the basis for calculating pension increases was changing away from RPI. It was agreed to insert the following sentence at the end of paragraph 7.4:

"He also asked whether there was to be a change away from using RPI as a basis for calculating pension increases. The Chairman said that he was not aware of any proposals to change"

- 2.2 Subject to the change outlined in paragraph 2.1, the note of the 29th FPC meeting was agreed.

3. Matters arising from the 28th FPC meeting - FPC(09)3

- 3.1 The Chairman introduced paper FPC(09)3 - 'Matters arising from the 29th FPC meeting'.

Consolidation of the Firefighters' Pension Scheme 1992

- 3.2 **Public Sector Abatement Policy** – The Chairman explained that as an action point from the last meeting CLG had asked HM Treasury for clarification on public sector abatement policy. HM Treasury had confirmed that In-service abatement and Inter-service abatement should still be applied in cases where a retired public sector employee was re-employed with the same or another public sector employer. HM Treasury also confirmed that the guidance on abatement that was attached at Annex A was still current.
- 3.3 Ivan Walker said that the other public sector pension schemes did not provide for inter-service abatement. He understood that the re-employed teachers were specifically exempted from abatement. He would write to the Chairman setting out his understanding of the position under other

public sector schemes and would ask CLG to raise his comments with HM Treasury.

ACTION: Ivan Walker to write to CLG .

- 3.4 In response to questions raised by the Committee, the Chairman said:
- any CLG guidance on abatement was informal;
 - the pension arrangements gave an FRA a discretion on abatement. It was important that an FRA had a clear abatement policy which could be explained to a member prior to being re-employed. The failure of a FRA to apply abatement to a member's pension on re-employment could lead to a challenge from the District Auditor;
 - the new financing arrangements for firefighter pensions introduced in 2006, provided less of an incentive/benefit for FRAs to apply abatement. If firefighters were re-employed and their pensions were not abated then central government, and essentially taxpayers, would be picking up the additional cost. This would not represent value for money from the tax payers' point of view;
 - the principle of abatement was particularly relevant to the FPS and NFPS due to the earlier retirement ages;
 - where a firefighter was re-employed with another public sector employer then inter-service abatement would cease to be applied when the member attained the normal pension age of the scheme (55 years in FPS and 60 years in the NFPS). However, if a retired member was re-employed within the Fire and Rescue Service then in-service abatement should continue indefinitely; and
 - he saw no need for CLG to issue further guidance on the matter.
- 3.5 **Table of Proposed FPS Amendments** – The Chairman confirmed that the table of proposed amendments had been amended to reflect discussions at the last meeting and had been passed to lawyers.
- 3.6 Des Prichard made reference to the amendment to Rule B1 to remove the requirement for Chief Fire Officers to seek permission from the FRA before becoming entitled to retire prior to attaining age 55 years. As the provision stands, it does not provide an “unqualified” right for CFOs to retire before reaching age 55 years and, therefore, this would have implications for CFOs when the new tax rules relating to minimum pension age come into force in April 2010. He asked whether the relevant FPS amendment order would be made in time for this. The Chairman said that he expected the amendment order would be made before 2010, however, following concerns from the LGA, the amendment to Rule B1 would only apply to CFO appointments made from the date that the proposed amendment order came into force. For any pre-existing CFO appointments, there would still be the requirement to seek the permission to retire from the FRA and that, after the new tax rules come into force in

April 2010, these CFOs would not be allowed to retire before age 55 years.

[Secretary's Note: From April 2010, the minimum retirement age under HMRC rules increases from 50 to 55 unless, on 10th December 2003, a scheme gave a member an unqualified right to take pension benefits before age 55. Any challenge would have to be against the HM Revenue and Customs rules.]

3.7 Des Prichard expressed APFO's concern that the amendment would be limited and that the current Rule was unnecessary as this matter should be dealt within the employees contract of employment. Changes to existing contracts of employment could be implemented through existing arrangements to satisfy any concerns expressed by employees. There was also a potential infringement of equality legislation as the current Rule was applicable to approximately 57 employees out of a workforce of over 35,000. APFO were also concerned and disappointed that the most recent amendment had not been discussed with the Pension Committee, and the decision by the Chair to add the further limitation following concerns raised by the LGA outside of the properly constituted Pensions Committee, had not followed proper and due process. APFO would be writing to the Chair of the Committee, expressing their concerns. This had not been discussed with or endorsed by the FPC. This view was supported by Ian Hayton of CFOA.

[Secretary's note: Further discussion regarding the amendment to rule B1 took place outside the FPC with the LGA and their concerns reflected in the table of proposed amendments.]

3.8 James Dalgleish said that the LGA were concerned that, if the amendment applied to existing CFOs, the matter would not be dealt with in their contracts of employment. Fred Walker said that whilst he understood the problem, it was important to recognise that the majority of CFO members did not spend a significant proportion of their careers as CFOs and, therefore, as the FPS is a final salary pension scheme, the ability of a CFO to retire from age 50 years represented a very significant cost to the pension scheme.

3.9 The Chairman concluded by saying that when the draft amendment order was completed by CLG lawyers there be an additional opportunity for members to submit comments. Ministers would make the final decision.

Revised Commutation Factors

3.10 The Chairman explained that following the Police JR judgement in March, it was decided that the revised commutation factors for the Police Pension Scheme (PPS) would be applied retrospectively from 1st December 2006 rather than 1st October 2007. The 1st December represented the date that GAD first wrote to the Home Office advising them that the commutation factors should be changed. CLG were currently considering

the implications of the judgment for the FPS. CLG expects to issue guidance to FRAs and to respond to the grievances by the end of June 2009.

- 3.11 Ivan Walker said that as the Police JR judgment enforced the application of the revised commutation factors for the PPS back to 1st December 2006, it would be reasonable to expect the FPS to do the same, at the very least. He suggested that FRAs should consider making backdated payments to all those FPC members who retired between 1st December 2006 and 30th September 2007; an additional benefit of making these payments immediately would be that CLG would not have to pay as much in interest. The Chairman agreed to discuss the suggestion with colleagues.

ACTION: CLG to consider whether FRAs should be advised to make backdated commutation payments to those FPS members who retired on or after 1st December 2006.

Appeal by Three London Firefighters

- 3.12 The Chairman advised members that following the appeal court judgment in the case of Marrion & Others, CLG was in the process of drafting a circular to provide FRAs with further informal guidance on ill-health retirement and was also revising the IQMP guidance to reflect the judgment. Copies of the draft circular and revised IQMP guidance, with changes tracked, would be circulated to the FPC. Members would be invited to submit their comments within 2 weeks. ALAMA's capabilities guidance would also be issued along with the draft CLG circular and IQMP guidance. The Chairman emphasised that the ALAMA capabilities guidance would be circulated for information purposes only.

ACTION: CLG to circulate the draft circular on ill-health retirement and the revised IQMP guidance to FPC members for comment.

[Secretary's Note: The draft CLG circular and revised IQMP guidance were issued to members on 1st June 2009. Comments were invited by Wednesday 24th June. ALAMA's capabilities guidance was also issued for information. These documents will also be published on the CLG website: www.communities.gov.uk/fire/working/firefighterpensions/firefighterspensioncommittee/]

- 3.13 Ivan Walker pointed out that CLG had already stated the view that circular FPSC 8/2008 – 'Commentary on ill-health retirement' was correct and had been endorsed by the appeal court judgement. He said that the FBU supported this view. He noted that at the last FPC meeting James Dalglish's had commented that until further notice circular FPSC 11/2006 was applicable. Following the judgment this was no longer the case. Until the circular and guidance was finalised, it was important that IQMPs recognised that the IQMP guidance was still in draft form and that if FRAs

wanted to know the implications of the law for ill-health retirement cases they should refer to the appeal court judgement.

- 3.14 It was agreed that if consensus could not be reached by means of correspondence then an additional ad hoc meeting would be set up in July to discuss a way forward.

[Secretary's Note: If required, provision has been made for an additional ad hoc meeting to be held at 11am on Friday 10th July 2009 in Eland House, London.]

Actuarial Valuation

- 3.15 The Chairman advised members that CLG were awaiting the final valuation report from GAD.
- 3.16 Ivan Walker asked if he could see a copy of the actuarial assumptions that GAD had used. The Chairman said that the assumptions would be documented in the report and that it would be more useful for members to see the report as a whole.
- 3.17 Des Prichard said that FRAs would be starting to plan their next year budgets soon. As there could be implications for any financial planning, it would be very useful if FRAs were given the earliest possible indication if employer contribution rates were going to be increased. The Chairman responded that early indications were that the costs associated with increased longevity had been offset by the savings made from the reduction in ill-health retirements as well as other changes made to the pension schemes. If any changes were necessary he would expect them to be implemented from April 2011 at the earliest.
- 3.18 Des Prichard said that there was indication that some FRAs may have "parked" some ill-health retirement cases pending the CLG guidance and this could mean a spike in the number of ill-health retirements. He asked whether CLG had gathered any data to show likely numbers. The Chairman said that whilst CLG had asked for data, FRAs had not provided any which suggested that there were few, if any. However, CLG expect that once new guidance was issued there would be a short-term increase in the number of ill-health retirements. However, if it manifested itself into a long-term increase this could have an impact on the scheme valuation.

40/60ths Limit on Transfers

- 3.19 The Chairman confirmed that CLG was currently discussing the issue with HM Treasury. CLG would report back to the FPC when satisfactory clarification was received.

4. Pensionability of Emoluments and Allowances – FPC(09)4

- 4.1 The Chairman introduced paper FPC(09)4 which set out CLG's concern over the pensionability of certain emoluments and allowances. CLG were especially concerned about the significant impact on pension costs where pensionable allowances/emoluments are awarded to members at late stages in their career. This practice acts to artificially inflate members' pensions without regard to past service costs. He said that the issue needed to be discussed in order to get an agreed and workable way forward which would provide clarity and consistency on how certain elements of pay are treated for pension purposes. The paper identified three methods of resolving the issue: (i) introduction of an approvals process to assess and to mitigate cost implications for the scheme; (ii) prohibition on the introduction of new pensionable allowances and emoluments; and (iii) adoption of Additional Pension Benefit arrangements.
- 4.2 Fred Walker highlighted his concern that those FRAs that did not make additional allowances pensionable were effectively subsidising those FRAs who were choosing to make the allowances pensionable. This was unfair and FRAs should be individually liable for any additional pension costs that related to local. In order to be able to consult on the three options identified, the FPC would need to have a better appreciation of what individual FRAs were actually doing in regards to the additional allowances and of the scope of the problem. The Chairman referred to committee paper FPC(09)1 which provided feedback on recent research undertaken.
- 4.3 Ivan Walker questioned whether the FPC was the correct forum to deal with the issue of pensionable pay. The Chairman explained that it was the statutory pension scheme that made pay pensionable and, therefore, the FPC was the appropriate forum.
- 4.4 Ivan Walker said that if the pension scheme clarified those elements of a firefighter's pay that should be pensionable then this would effectively mean that the pensionable pay provisions in the Grey book would no longer apply. He said that if this was the case the FBU would object to this. The Chairman said that it was not the intention to make the pensionable pay provisions in the Grey book obsolete. The problem was with decisions being made by FRAs on a local level with regard to the treatment of additional payments as pensionable. It would be better for the pension scheme to clarify which elements of pay should be treated as pensionable and which should not.
- 4.5 Ivan Walker referred to option one in the paper and how this might work. The Chairman replied that the process would allow CLG to consider the proposal and address issues such as whether an allowance was permanent or time limited. The past service costs of proposals could be

assessed in conjunction with GAD prior to FRAs making a decision. He made reference to the Civil Service Pension Scheme which made only the member's basic pay pensionable and required the employing Department to pay the full cost of any additional payments which it wished to make pensionable. He also said that as a consequence of the new financing arrangements, other than the small fixed cost associated with increased employer contributions, there was no longer any incentive for FRAs to consider the pension costs associated with making an additional allowance pensionable. As stewards of the pension schemes, it was incumbent on CLG to ensure value for money for the taxpayer.

- 4.6 Ivan Walker made reference to a court case judgement in Kent vs Farrand; he said that judgement in the case determined that what makes pay pensionable is the fact that it is paid regularly. The temporary or permanent nature of the payment was not the issue.

[Secretary's Note: Please see the attached copy of the judgment in Kent & Medway Towns Fire Authority vs Farrand & Hopper]

- 4.7 Members were invited to submit comments on paper FPC(09)4 in time for the next meeting in August. CLG would come back to the FPC with proposals on how to resolve the issue.

ACTION: FPC members to submit comments on paper FPC(09)4 by Friday 24th July 2009.

5. Any Other Business

- 5.1 Glyn Morgan asked for the latest position with regards to lifelong survivor benefits in the Police Pension Scheme. Jim Preston confirmed that there was an aim to start one-off lump sum payments in July by the Police Dependants Trust, and only to the survivors of police officers killed on duty.

6. Dates of Future Meetings

10 July 2009 [Additional meeting, if required]
27 August 2009
18 November 2009
18 February 2010
13 May 2010

***Communities and Local Government
June 2009***

Attendees

Martin Hill (Chairman)	DCLG
Andy Boorman	DCLG
Anthony Mooney (Secretary)	DCLG
Fred Walker	LGA
James Dalglesh	LGA
Jim Preston	SPPA
Bertie Kennedy	DHSSPSNI
Erika Beattie	DHSSPSNI
Terry McGonigal	NIFRS
Paul Woolstenholmes	FBU
Tam Mitchell	FBU
Ivan Walker	Thompsons (Advisor to FBU)
Des Prichard	APFO
Ian Hayton	CFOA
Glyn Morgan	FOA
John Barton	RFU`
Dr Will Davies	ALAMA
John Terry	COSLA
Brian Wallace	COSLA

Apologies

Eunice Heaney	Consultant
Jason Pollard	Welsh Assembly
Julia Letton	Welsh Assembly
Craig Thomson	FOA
Tristan Ashby	RFU
Dr Ian Griffiths	ALAMA