FIREFIGHTERS' PENSION COMMITTEE

NOTE OF THE 38th MEETING OF THE FIREFIGHTERS' PENSION COMMITTEE HELD ON 17th NOVEMBER 2010 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 Louise Fletcher from GAD and Andrew Cornelius from DCLG.

2. Notes of the 36th and 37th FPC meetings

2.1 Ivan Walker referred to the final bullet point on page 4 on the note of the 37th meeting and said that the point should emphasise that the savings referred to were scheme savings. It was agreed that the paragraph would be amended to read:

"Lord Hutton's interim report noted that the savings generated from the transition from the FPS to the NFPS were higher than similar changes in other public service pension schemes."

2.2 Subject to the above change the notes of both the 36th and 37th meeting were agreed.

3. Matters arising from the 36th and 37th FPC meetings – FPC(10)12

3.1 The Chairman introduced paper FPC(10)12 which updated members on the items discussed at the 36th and 37th meetings held on the 25th August 2010 and 2nd November 2010 respectively.

Firefighters Pension Scheme Data

3.2 The Chairman explained that as an action point from the 36th meeting DCLG had circulated updated rates of ill-health retirements and scheme membership with the note of the meeting.

Restriction of Pension Tax Relief

3.3 Please refer to section 4 of this note.

Options for the future/Cap & Share

3.4 As an action point from the 36th meeting FPC members were invited to identify the types of data that would be required in order to progress discussions on future options for the firefighter pension schemes. One response had been received from Ivan Walker. DCLG's subsequent exchanges had been annexed to the matters arising paper.

4. Restricting Pensions Tax Relief – FPC(10)13

4.1 Andy Boorman introduced committee paper FPC(10)13. He said that the paper provided an update to the Government's proposals for restricting pension tax relief which had been discussed previously. In response to concerns and comments raised to the original proposals, HM Treasury have introduced some measures to mitigate against one off increases in pensionable pay, which had been one of the issues highlighted in DCLG's response to the initial discussion document. He said that HM Treasury had decided that the Annual Allowance (AA) would be set at £50K and the valuation factor would be 16. HM Treasury had introduced a 'carry forward' provision which would allow scheme members to accrue any unused AA from the previous 3 years. A further measure to help alleviate the impact of the new rules was for the effect of inflation to be reflected in the opening value of a pension at the start of the year effectively reducing the amount of notional pension growth for each year. DCLG have currently raised some concerns with HM Treasury about the absence of any concession for the treatment of fast accrual and asked them to reconsider the issue. DCLG would inform the Committee if there was any change to HM Treasury's proposals.

4.2 Des Prichard referred to the 'carry forward' provision and asked whether the 3 year period would include the year being tested. Andy Boorman responded that he understood it to mean that an individual who had exceeded the AA in the current year would be able to use any unused AA from the three years prior to the Pension Input Period (i.e. 4 years).

4.3 Des Prichard also referred to the significant increase in pay when a person was promoted from Area to Brigade Manager; anyone promoted between these two roles would inevitably exceed the AA and would therefore trigger the payment of a tax recharge. In his view this would inhibit applications for Brigade Manager. Fred Walker agreed that the new rules could act as a deterrent for employees applying for Brigade Manager.

4.4 Des Prichard asked that representations be made to HM Treasury to draw attention to the fact that members of the two (closed) pension schemes that operated fast accrual would be severely affected by the new tax rules and to ask whether there was any scope to provide some form of protection. The Chairman said that DCLG had already written to HM Treasury asking for further consideration to be given to the issue of fast accrual and agreed to circulate the relevant correspondence.

[**Secretary's Note**: The email correspondence from DCLG to HM Treasury has been attached to Annex B]

5. IQMP Guidance – FPC(10)14

5.1 The Chairman introduced committee paper FPC(10)14. He said that following a recent decision by the Board of Medical Referees DCLG had been advised by Counsel that the current IQMP guidance needed to be rewritten to reflect the decision of Mr Justice Ouseley in the case of *Anton & Crocker*. Members were invited to comment.

5.2 Will Davies of ALAMA commented that attributing **c**ausation in this context can be notoriously difficult and that the outcome often depends upon issues of policy rather than medical judgement. He acknowledged that the FPC meeting was not the place for an in depth discussion on the subject but made the following points:

- It appeared that the guidance based on the judgment in the High Court case in *Anton & Crocker* over-rode an interpretation of the regulations and an apportionment principle which had been established practice for several years. ALAMA and other interested parties believed that this principle had served to ensure a suitable balance in compensation cases.

- Apportionment features in a number of other reported civil cases. These are not referred to in the High Court judgment. ALAMA would be interested to know whether these other cases might have a bearing on the guidance and whether Counsel considered these cases in providing advice.

- If DCLG are obliged to follow Counsel's advice, ALAMA members would of course give due consideration to the proposed guidance when dealing with future injury award cases. However, ALAMA will be consulting its membership and wishes to reserve the option of commenting in more detail.

5.3 Des Prichard said that an unintended consequence of this change may be an increase in appeals against decisions made by the Board.

5.4 Ivan Walker referred to a recent medical appeal case where the FRA had introduced apportionment at a review. Legal advice in the case had been that if apportionment had not been applied at the initial consideration it could not be applied at a later review. He suggested that it would be helpful if DCLG issued a note to FRAs.

6. Firefighter Pension Arrangements: Pension Contributions – FPC(10)15

6.1 The Chairman referred to the discussion at the 37th meeting regarding the implementation of progressive increases to the levels of employee pension contributions which would contribute to the annual savings of £1.8bn required by unfunded public sector pension schemes by 2014/15. He said that the level of savings required as part of the Spending Review equated to an increase in pension contributions of 3% (3.2% after the protection for the Armed Forces Pension Scheme was factored in). This increase would be phased in from April 2012. DCLG were awaiting clarification from HM Treasury on how the increase in contributions rates should be applied and what, if any, flexibilities there were. Committee paper FPC(10)15 set out examples of how such an increase in contribution rates might impact on members of the FPS and NFPS, with the introduction also of tiered contribution rates; and how the increases might be varied between the two schemes in order to afford certain protections to members of the NFPS who were already paying proportionally a greater share of the cost of their scheme. The paper did recognise that proportionally there were few firefighters that earned above £28K per annum and therefore little scope to apply higher contribution rates to more senior staff. Members were invited to comment.

6.2 The following unattributed points were raised:

- If the proposed increase in employee contribution rates were accepted would the existing pension benefit structure be retained?

  In response it was explained that in the short term the increase in employee contributions would mean that the current benefits structure would remain unchanged. However, Lord Hutton's final report would ultimately dictate the long term reforms for all public sector pension schemes;

- There was concern about increasing employee contributions in the short term when there was still uncertainty on the longer term reforms;

- The Government explicitly stated that all unfunded public sector pension schemes would be required to generate total savings of £1.8bn which equated to an average of a 3% increase in employee contribution rates. It could be interpreted that this did not necessarily mean that the firefighter pension schemes had to implement an increase of 3% in employee contribution rates;

- It was accepted that the both firefighter pension schemes should contribute to the overall £1.8bn savings but there was a need to assess the value of the current contribution rates in both the FPS and NFPS compared to those in other public sector pension schemes. It was suggested that the 11% employee contribution rate in the FPS equated to an 8.3% contribution rate in a 40 year scheme. It was suggested, therefore, that the FPS employee contribution rates should not be increased until the equivalent rates in the LGPS were increased to 8.3%. It was incumbent on the FPC to argue the case of equalisation of pension contributions to HM Treasury;

In response it was highlighted that the benefits structures for each public sector pension scheme was different which meant that this type of assessment would be limited;

Members were also advised that if any representative body felt that there was case to argue that firefighters employee contributions should not be increased by 3% in line with all other public sector pension schemes then they should write direct to HM Treasury or DCLG ministers;

- The Government had decided that the employee contribution rates for all public sector pension schemes had to be increased by an equivalent of 3%. They were not looking at each individual scheme;

- Members of both the FPS and NFPS were currently paying proportionally higher contributions than members in the LGPS;

- Similar points had been raised by representatives at the Local Government Pensions Review Group where it was argued that members of the LGPS should not have to pay any additional contributions as members of the Civil Service Pension Scheme only paid 1.5% contributions;

- £1.8bn savings was the cost envelope set by the Government and it should not be necessary for all schemes to increase their employee contribution rates by 3%;

- There appeared to be flexibility in how to spread the increase in contributions rates across the FPS and NFPS;

- The increase of 3% in employee contributions made allowances for natural wastage and redundancies. The increase is a cash equivalent of 3% in employee contributions by 2014/15 and each year thereafter until such times as the longer terms reforms that follow on from Lord Hutton’s final report are implemented;

- The proposals outlined in the committee paper provided protection for the NFPS for the first two years which would be paid by an increase in contributions for the more senior employees in the FPS;

- There was real concern that the increase in employee contributions represented a significant additional sum for members to pay at a time when there was a pay freeze and other significant financial pressure on members;

- Was there any option for generating the cash equivalent of required savings through combined measures of reducing pension benefits and an increase in contribution rates?

In response to the point it was explained that DCLG were waiting for guidance on this from HM Treasury; however, as changes to scheme retirement ages etc. would form part of the Hutton Stage 2 longer term reforms it was not expected that this would be an option;

- Increasing the FPS employee contribution rates to 17% for senior employees represented tokenism.

  In response to this point it was explained that the total cost of the FPS represented 37.5% of pensionable pay which was approx. 17% higher than the cost of the LGPS. The disparity between the costs of both schemes had to be bridged. It was also noted that the future contribution rates for senior staff in the LGPS were likely to be in the region of 17%;

- There was no doubt that the FPS provided an excellent pension scheme but raising contribution rates from 11% to 17% for certain members was simply unfair. Increasing contribution rates from 11% to 14% would remain challenging;

- If long term reforms meant that future scheme costs would be reduced could this result in a reduction in employee contribution rates?

  In response it was confirmed that if the total cost of the schemes came down following Lord Hutton's long term reforms then potentially the employee contribution element could be reduced. This would ultimately depend on the total cost of the schemes and the level of employer contribution rates;

- An increase of 3.2% in pension contribution rates equated to a cash figure of £112M. Currently awaiting HM Treasury to clarify whether part of this cash figure could be generated through scheme savings;

- It was also necessary to factor in the costs associated with providing protections for certain members which would vary from scheme to scheme. In the LGPS 60% of members earn salaries less than £21K and, therefore, providing a protection for low earners may have a greater impact on the middle to higher earners.

6.3 The Chairman concluded the discussion by saying that the concerns raised by stakeholders to the FPC would be passed back to Ministers. He expected to have more specific information and clarification from HM Treasury for the next meeting in January 2011.

7. Any Other Business

A proposal for the introduction of Discretionary Compensation Regulations or similar mechanism for members of the FPS and NFPS

7.1 Des Prichard introduced the item and explained that under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (as amended) local government employers had the discretion to offer enhanced redundancy payments to local government employees over and above the statutory minimum. He said that there was currently no equivalent discretion for Grey Book staff. This meant that in cases where a firefighter was made redundant the employing FRA could only offer statutory minimum redundancy payments. This highlighted an obvious disparity in the treatment of employees within the Fire and Rescue Service (i.e. between Green and Grey book staff). The FPC was therefore asked to consider providing a similar discretionary compensation arrangement for members of the FPS/NFPS and those who were eligible for membership of the FPS/NFPS.

7.2 Joanne Boyle said that there were similar concerns in Scotland.

7.3 Glyn Morgan said that the provision of discretionary compensation arrangements for firefighters should be viewed in the same light as the current proposal to give employing FRAs the discretion to top up the commutation lump sum for those firefighters restricted to a commutation lump sum equal to 2.25 times pension in that it would be a useful provision to have but FOA would not want to see it being applied.

7.4 Sean Starbuck questioned whether the FPC was the correct forum in which to raise the provision of a discretionary compensation arrangement. He said that it was a redundancy issue which needed to be raised with the National Joint Committee (NJC).

7.5 Des Prichard said that he felt that the FPC was the appropriate forum as there was clear links between the proposal, the TOR of the FPC, and the Fire and Rescue Services Act 2004. In response the Chairman said that it was DCLG's view that the proposal first needed to be raised for consideration at the NJC. If accepted, the employer representatives could then raise it as an agenda item at the FPC. The Fire and Rescue Service Act 2004 would provide the necessary authority for the DCLG to introduce the necessary legislative provision once all parties had agreed terms.

7.6 Terry Crossley said that the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 gave employers the discretion to offer enhanced redundancy payments to any employee who worked for local government who was eligible to join the LGPS not just those who were members.

8. Dates of Future Meetings

12 January 2011 **(11am) – Note new date**
2 February 2011 **(11am)**
4 May 2011 **(11am)**
9 August 2011 **(11am)**
3 November 2011 **(11am)**

DCLG
November 2010

Annex A

Attendees

Martin Hill (Chairman)	DCLG
Terry Crossley	DCLG
Andy Boorman	DCLG
Anthony Mooney (Secretary)	DCLG
James Pepler	GAD
Louise Fletcher	GAD
Fred Walker	LGA
Joanne Boyle	SPPA
Christine Maguire	DHSSPSNI
Erika Beattie	NIFRS
Sean Starbuck	FBU
Tam Mitchell	FBU
Ivan Walker	Thompsons Solicitors
Ian Hayton	CFOA
Des Prichard	APFO
Glyn Morgan	FOA
Tristan Ashby	RFU
Dr Will Davies	ALAMA

Observer

Andrew Cornelius	DCLG

Apologies

Eunice Heaney	Pensions Consultant
James Dalgleish	LGA
Brian Wallace	CoSLA
John Enos	CoSLA
Ged Murphy	LGA
Craig Thomson	FOA
John Barton	RFU

Annex B

Correspondence from DCLG to HM Treasury: Pension Tax Restrictions

10th November 2010

To HM Treasury

At a recent meeting with Bob Neill, our Fire Minister, representatives of the Association of Principle Fire Officers (APFO) highlighted their concerns over the HMT/HMRC plans for new restrictions on pensions tax relief, in particular the implications for pension schemes that feature accelerated (double) accrual. In the Firefighters' Pension Scheme (FPS) pension accrues at 1/60th for each of the first 20 years but at 2/60th thereafter to a maximum of 40/60th after 30 years.

Despite representations from many quarters within the Fire and Rescue Service following the publication of the Government's discussion document, no concessions, exemptions or special treatment of any kind have been afforded to these schemes. APFO recognise that, as a result, some employees could face a year on year tax charge, running to thousands of pounds, simply through growth in pension resulting from an additional year in service with no increase in "take-home" pay. This could potentially affect all members of the FPS on salaries of £93,750 and above i.e.,

$$\frac{\text{£50,000 (AA)}}{\text{16 (Factor)}} \times \frac{60}{2} = \text{£93,750}$$

It is accepted that recently proposed mitigation measures such as allowing unused Annual Allowance to be carried forward to subsequent years and uprating the opening pension value each year by CPI will reduce the impact. However, those on rates of pay in excess of £93,750 run the risk of incurring a charge simply through service accrual. The risk to others on more modest rates of pay who receive any increase in pensionable pay combined with the effect of double accrual is also significant.

The Minister listened to the concerns raised by APFO and agreed to take up the matter with HM Treasury.

It would be helpful, therefore, if you could say whether the impact on members of schemes that feature accelerated accrual was given due consideration. It does appear to us that a case could be made for a modification of approach in valuing pension growth, perhaps by smoothing the effect of the accrual over the whole period of the individual member's pensionable service. We would be happy to discuss this, or any other options, with you in more detail.

Examples illustrating the concerns are given below. In the first example a scheme member faces an ongoing tax charge from the end of the tax year 2010/11 of 50% (individual's marginal tax rate) on the excess over the £50k Annual Allowance charge. The charge for 2010/11 in this case would be £14,349.33.

The second example shows the combined effect of double accrual plus a quite modest increase in pensionable pay. In this case, pay has increased by 2% in 2013/14. As a result, the tax charge would be £17,840.00 compared with £3,333.33 had there been no increase in pensionable pay. This amounts to an additional tax charge of £14,506.00 arising from only a £3,400.00 increase in pay.

I am copying to Peter Spreadbury in the Home Office as the Police Pension Scheme 1987 features similar accelerated accrual arrangements.

Regards

Andy Boorman
Firefighter Pensions Team

Example 1: Member of FPS. Pay settlements for 2008/09 and 2009/10 applied then pay freeze applied to following years. CPI rates as advised by HMT except for 2012/13 onwards where a CPI increase of 2.5% has been assumed.

PIP	Opening P/Pay	Closing P/Pay	Pay Increase	CPI	Opening Service (60ths)	Closing Service (60ths)	Opening Pension value	Closin Pensio Valu
2008/09	£163,886.02	£167,901.23	1.0245	1.018	20	22	£55,611.99	£61,56
2009/10	£167,901.23	£170,000.00	1.0125	1.045	22	24	£64,334.16	£68,00
2010/11	£170,000.00	£170,000.00	1	1.011	24	26	£68,748.00	£73,66
2011/12	£170,000.00	£170,000.00	1	1.031	26	28	£75,950.33	£79,33
2012/13	£170,000.00	£170,000.00	1	1.025	28	30	£81,316.67	£85,00
2013/14	£170,000.00	£170,000.00	1	1.025	30	32	£87,125.00	£90,66
2014/15	£170,000.00	£170,000.00	1	1.025	32	34	£92,933.33	£96,33

Example 2: Same member of FPS. Pay settlements for 2008/09 and 2009/10 applied. Pay freeze applied until 2012/13. Pay settlements of 2% applied to 2013/14 and 2014/15.

PIP	Opening P/Pay	Closing P/Pay	Pay Increase	CPI	Opening Service (60ths)	Closing Service (60ths)	Opening Pension value	Closin Pensio Valu
2008/09	£163,886.02	£167,901.23	1.0245	1.018	20	22	£55,611.99	£61,56
2009/10	£167,901.23	£170,000.00	1.0125	1.045	22	24	£64,334.16	£68,00
2010/11	£170,000.00	£170,000.00	1	1.011	24	26	£68,748.00	£73,66
2011/12	£170,000.00	£170,000.00	1	1.031	26	28	£75,950.33	£79,33
2012/13	£170,000.00	£170,000.00	1	1.025	28	30	£81,316.67	£85,00
2013/14	£170,000.00	£173,400.00	1.02	1.025	30	32	£87,125.00	£92,48
2014/15	£173,400.00	£176,868.00	1.02	1.025	32	34	£94,792.00	£100,22