

FIREFIGHTERS' PENSION COMMITTEE

NOTE OF THE 19th MEETING OF THE FIREFIGHTERS' PENSION COMMITTEE HELD ON 21 NOVEMBER 2006 AT ELAND HOUSE, BRESSENDEN PLACE, LONDON

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

1. Introduction

1.1 The Chairman welcomed everyone to the meeting.

2. Minutes of the 18th FPC meeting

2.1 The minutes of the 18th FPC meeting were agreed.

3. Matters arising from the 17th FPC meeting - FPC(06)27

3.1 *Workshops:* The Chairman advised members that he had now completed 6 of the 10 workshops. General feedback from those who had attended indicated that they were very useful.

3.2 A number of points had been raised during the workshops, one being the options that will be available to members of the FPS who want to transfer over to the NFPS during the options exercise. The Chairman confirmed that members of the FPS who wish to benefit from the preferential conversion factors that will be available during the options exercise will be required to transfer to the NFPS from the 6th April 2006. Any excess employee pension contributions paid for service after 5th April 2006 would be repaid to the member.

3.3 Ray Jennings of LGA enquired as to when the refund of employee contributions would have to be paid. The Chairman said that the NFPS Order would not specify any period but he would expect any refund to be made as soon as possible after the option had been made and preferably within. 2006/7 financial year.

3.4 *Discussion Forum:* The Chairman advised members that the number of comments generated by the discussion forum was disappointing. His team intended to use it as the main tool for communicating with administrators during the options exercise starts.

3.5 *Group Personal Pensions (GPPs):* There was no further feedback on how FRAs were dealing with the GPPs they were running.

3.6 Derek Chadbon of RFU said that the only outstanding issue was that there were no illustrated examples to indicate the amount of service in the NFPS that could be bought with the transfer values from GPPs. The Chairman said that it would not be possible to do until the Government Actuary Department (GAD) provided DCLG with the standard transfer factors for the NFPS. When these transfer factors were available it would be the responsibility of the member to approach the FRA to ask them how much NFPS service the value of

their GPP would purchase. FRAs should be geared up to respond to such requests early in January 2007.

- 3.7 Ivan Walker of Thompsons enquired about the current position of the guidance for IQMPs. The Chairman said that DCLG were currently drafting the guidance and would be consulting with ALAMA prior to issuing for wider consultation.
- 3.8 Tam Mitchell of FBU made reference to paragraph 6.1 of the minutes of the last meeting and asked whether there had been any further development regarding the Employment Tribunal case for retained membership of the FPS. The Chairman said that there was nothing further to add.

4. Age Discrimination - Oral Update

- 4.1 Jim Preston of SPPA advised the FPC that the issue relating to Rule B1 of the FPS (see paragraph 5.1 of 18th FPC minutes) was still with Counsel who had not given an opinion.

5. Final Draft Orders - FPC(06)28

- 5.1 The Chairman introduced paper FPC(06)28. He referred to the NFPS Order and said that this was, in essence, the final draft subject to some textual amendments. DCLG were currently in the process of clearing the draft order with HM Treasury who had some issues with the drafting and with the transfer terms being offered to FPS members during the options exercise. It was DCLG's position that there are good arguments for encouraging members to transfer from the FPS to the NFPS.
- 5.2 Ian Hayton of CFOA asked the Chairman for confirmation that members of the FPS would still be able to transfer from the FPS to the NFPS after the completion of the options exercise i.e. 31st March 2007. The Chairman gave his assurance that FPS members would have the option to transfer at any time after the closure of the options exercise but would not benefit from the preferential transfer terms.
- 5.3 Ivan Walker of Thompsons enquired as to what other provisions of the draft NFPS order would be affected by the closure of the options exercise. The Chairman responded by saying that the transitional provisions, as set out in Schedule 2 of the order, would not apply after 31st March 2007.
- 5.4 Reference was made to the 45/60th cap set out in the transitional arrangements. The Chairman said that this cap would allow the majority of FPS members to transfer into the NFPS if they decided to. He advised members that this cap was subject to HM Treasury approval.
- 5.5 Tam Mitchell of FBU enquired as to how long retained firefighters would have to pay back the employee contributions in order to reckon as pensionable any periods of service back to 6th April 2006. The Chairman confirmed that they would have 6 months after joining the NFPS to pay any outstanding employee contributions.

- 5.6 Tam also referred to the ongoing employment tribunal case for retained access to the FPS and asked that in the event that the employment tribunal grant retained access to the FPS back to 2000, how long would the retained firefighters have to pay any outstanding employee contributions. The Chairman said that in this situation any remedy would have to be agreed by the parties, or if necessary referred back to the tribunal for a decision.
- 5.7 In the discussion that followed, the Chairman highlighted the fact that if retained firefighters were successful in their claim to be treated as part-time firefighters and gained access to the FPS, the pension scheme would need to treat them on a similar basis to part-time regulars and therefore the existing protection of having any death and serious injury benefits calculated at the rate of a whole-time regular would be lost. He emphasised that special treatment had been given primarily to compensate retained firefighters for the fact they did not have access to any pension scheme.
- 5.8 Ian Hayton of CFOA made reference to his personal notes that he made during the 17th FPC meeting and noted that the Chairman had stated that the protected rights for retained was subject to the outcome of the employment tribunal.
- 5.9 Tam Mitchell of FBU highlighted that because retained firefighters recruited on or after 6th April 2006 do not have the same protected rights to death and serious injury benefits as their retained colleagues who were in service prior to the 6th April, this could have an adverse effect on retention and recruitment. The Chairman responded by saying that this was not a pension issue.
- 5.10 Chris Large of APFO referred to Part 2, paragraph 1(a) of the NFPS Order and asked the Chairman to clarify who was eligible for membership of the new scheme. The Chairman said that this provision reflected the intention that membership should be open only to those who are recruited as firefighters, crew managers, and watch managers. Those employees who were recruited to a higher role would be eligible to join the Local Government Pension Scheme (LGPS). It would be the responsibility for the FRAs to determine whether someone is eligible or not.
- 5.11 Derek Chadbon of RFU raised four points regarding the NFPS Order. First in relation to Part 15, paragraph 4 he asked why there was no reference to retained firefighters. The Chairman said that the reference to firefighter included retained, volunteer and regular.
- 5.12 Secondly, he asked whether the illustrated benefit entitlement forecast mentioned in Part 15, paragraph 4(3)(b) would be based on current pensionable pay. The Chairman said that he envisaged that it would be based on the average of their pensionable pay for the year but that he would ask Heywoods to confirm what rate of pay the computer system would use to calculate the forecast.

ACTION: DCLG to ask Heywoods what rate of pay the computer system uses to calculate benefit entitlement forecasts.

- 5.15 Thirdly, he asked what the reason was for the reference to '*within nine months of the coming into force of the Firefighters' Pension Scheme (England) Order 2006*' in Part 15, paragraph 6(1). The Chairman said that this provision was tied into the options exercise and would be amended to '*by 31st March 2007*'.
- 5.13 In a final comment, Derek referred to Schedule 1, paragraph 2. He asked why the calculation related to a '*whole-time*' firefighter. The Chairman said that this had already been picked up on this and were in the process of correcting it to '*whole-time regular*'.
- 5.14 Will Davies of ALAMA referred to rule 3(2)(a) of Part 1 of the NFPS . and asked for clarification of the meaning of '*role*' in this instance. The Chairman confirmed that this was a reference to the duties of the firefighter's last role and related to the duties as set out in the role maps.
- 5.15 The Chairman concluded by advising that he expects to put the Orders to Ministers shortly for signature. It is anticipated that the Orders will be made in December to come into effect by the end of December 2006 or early January 2007.

6. Any Other Business

- 6.1 Will Davies said that he had attended an ALAMA conference in the preceding week and one of the issues that had been discussed related to ill-health retirement. ALAMA members were aware that firefighters who were permanently disabled from operational duties but capable of performing other duties of the role were now regarded as ineligible for ill-health retirement, even in circumstances where a suitable vacancy could not be offered by the FRA. In practice the Fire and Rescue Service had a limited capacity for redeploying firefighters into alternative non-operational employment and therefore there was the potential for injured firefighters to be dismissed without access to an ill-health pension or injury award.
- 6.2 The Chairman said that the definition of firefighter within the FPS included a requirement to engage in firefighting and to perform other duties as appropriate to his role as a firefighter (other than, or in addition to, engaging in firefighting). The test for whether a regular firefighter was permanently disabled and entitled to an ill-health award was clear: the firefighter had to be permanently disabled for firefighting and for performing other duties appropriate to the role. The pension scheme was not concerned about the availability of jobs, nor should it be.
- 6.3 He also said that at the time of the amendment to the definition of regular firefighter in September 2004, the Department had issued guidance advising FRAs that in cases where a firefighter was permanently disabled for operational duties but not permanently disabled for non-operational duties appropriate to his role, ill-health retirement could be considered where no appropriate vacancy was

available. This guidance reflected concerns at that time about the availability of other work. First because the new role maps for firefighters were still in process of implementation, and secondly the changes to the duties placed on authorities by the enactment of the Fire and Rescue Services Act 2004 - particularly the primacy given to fire safety - were also in process of implementation. Together these were increasing the job opportunities for firefighters. Now that FRAs had had time to adapt to the new role structures, DCLG had revised its guidance to make clear the strict requirements of the Scheme.

- 6.4 Ivan Walker of Thompsons referred to the Local Government Pension Scheme (LGPS) and said that in cases where an employee was permanently disabled for doing the job that they were doing prior to an injury and where no appropriate alternative employment could be offered, the employer was able to determine that the employee was permanently disabled for the purposes of the LGPS and therefore eligible for ill-health retirement. The Chairman said that it was his understanding that the ill-health retirement provisions within the LGPS were narrower than was being suggested and invited Mr Walker to provide the reference.

ACTION: Ivan Walker of Thompsons to provide the appropriate LGPS reference.

- 6.5 Glyn Morgan of FOA asked where the devolved administrations were relation to the NFPS order. The Chairman explained that Wales were currently working on the final draft which needed to be finalised by February 2007 otherwise it could not be able to be submitted to the assembly before June 2007. Jim Preston of SPPA explained that, for Scotland, the NFPS order had just been issued as part of a four week consultation. He said that the sections relating to financing and GPP schemes were not replicated for Scotland as they were not relevant. Bertie Kennedy of DHSSPSNI explained that, for Northern Ireland, the corresponding NFPS order was now ready to be made about the time of the England Order.
- 6.7 Ivan Walker of Thompsons made reference to the restriction in the amount of commutation to 2.25 times pension as set out in Rule B7(5) of the FPS. He understood this restriction to be nothing more than a remnant of old tax regulations and asked if the restriction could be removed. The Chairman said that this restriction does not feature in the NFPS and this could be considered when the FPS Order was consolidated.

7. **Dates of Future Meetings**
21 December 2007 (Cancelled)
17 January 2007
14 February 2007
21 March 2007
18 April 2007
17 May 2007

DCLG
November 2006

19th Meeting of the Firefighters' Pension Committee

Attendees

Martin Hill (Chairman)	DCLG
Andy Boorman	DCLG
Maggie Smith	DCLG
Nitin Bhayani	DCLG
Anthony Mooney (Secretary)	DCLG
Fred Walker	LGA
Ray Jennings	LGA
Jim Preston	SPPA
Bertie Kennedy	DHSSPSNI
Ivan Walker	FBU (Thompsons Solicitors)
Tam Mitchell	FBU
Derek Chadbon	RFU
Chris Large	APFO
Ian Hayton	CFOA
Glyn Morgan	FOA
Dr Will Davies	ALAMA

Apologies

Eunice Heaney	Consultant
Kate Williamson	Scottish Executive
Jason Pollard	Welsh Assembly
Julia Letton	Welsh Assembly
Terry McGonigal	NIFRS
David Hosking	RFU
Matt Wrack	FBU
Andy Dark	FBU
Paul Woolstenholmes	FBU



Association of Local Authority Medical Advisors
(Incorporating Medical Advisors to the Fire and Police Services)

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22nd January 2007

Dear Martin

Minutes of the 19th Meeting of the Firefighter's Pension Committee held on 21 November 2006

As agreed at the FPC meeting last Wednesday, I would like to submit a revised version of minute 6.1 to include some additional points as follows.

Proposed Replacement Minute 6.1

Will Davies reported that he had attended an ALAMA conference in the preceding week and one of the issues that had been discussed related to ill-health retirement. ALAMA members had been made aware that firefighters who were permanently disabled from operational duties but capable of performing other duties of the role, were now regarded by the DCLG as ineligible for ill-health retirement, even in circumstances where a suitable vacancy could not be offered by the FRA. In practice, the Fire & Rescue Service had a limited capacity for re-deploying firefighters unable to continue as operational firefighters due to ill health or injury. There was therefore a potential for such firefighters to be dismissed without access to an ill-health pension or injury award. He acknowledged that this was a policy issue rather than a medical issue but he was concerned that the change of policy had not been discussed nor appreciated by the FPC. A consequence could be that a firefighter whose career as an operational firefighter had been brought to an end as a result of severe injuries sustained at an incident, could be denied a pension and injury award and this seemed manifestly unfair. Prior to April 2006 guidance had been compatible with ill health retirement in such circumstances. He questioned how the DCLG's interpretation of the relevant provision could have changed when the statutory wording of the provision remained the same. Derek Chadbon of RFU, Ian Hayton of CFOA, and Glyn Morgan of FOA expressed similar concerns.

For the record, last Wednesday, I cleared with the FPC members identified above, my reference to them in the last sentence. Please do not hesitate to contact me if any points require clarification.

Kind regards

Yours sincerely

Will Davies

ALAMA Firefighters Pension Committee Representative