

FIREFIGHTERS' PENSION COMMITTEE

NOTE OF THE 32nd MEETING OF THE FIREFIGHTERS' PENSION COMMITTEE HELD ON 18th NOVEMBER 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. He introduced Jenny Coltman, who would be taking over from Jim Preston now that he was moving to a different position within SPPA. He also welcomed Linda Ford of the NIFRS and Gillian McMaster of DHSSPSNI.

2. Note of the 31st FPC meeting

- 2.1 James Dalgleish asked for the 4th bullet point of paragraph 3.3 to be amended to reflect that it was the LGA's view that the FPS 1992 regulations did not provide for In-service abatement where a member had been re-employed to a position outside the role of a firefighter.
- 2.2 Des Prichard asked for the 2nd bullet point of paragraph 3.3 to be amended to say that the re-employment of a retired firefighter "*could*" represent significant saving to a FRA rather than "*would*". He also referred to the 5th bullet point of the same paragraph and highlighted that there were currently 45 FRAs in England, not 46.

[Secretary's Note: There are 45 English FRAs plus Scilly Isles]

- 2.3 The minutes of the 31st FPC were agreed subject to the above changes.

3. Matters arising from the 31st FPC meeting - FPC(09)6

- 3.1 The Chairman introduced paper FPC(09)6 – 'Matters arising from the 31st FPC meeting'.

Consolidation of the Firefighters' Pension Scheme 1992

- 3.2 The Chairman confirmed that CLG lawyers had commenced work on the consolidation of the FPS 1992 Order. Prior to the completion of the consolidation process, it was likely that CLG would make a short amendment order to address certain non-contentious issues that had been identified and needed to be effected within a shorter timescale than the consolidation process; he made reference to one proposed amendment that would enable a decision made by the Board of

Medical Referees to be referred back to the Board in certain circumstances rather than going straight to Judicial Review. The Chairman confirmed that all proposed amendments would be subject to consultation.

- 3.3 Des Prichard highlighted that the amendments associated with the consolidation process had already been discussed in detail by the Committee and asked for an up to date copy of the document which outlined the proposed amendments. The Chairman said that a link to the relevant committee paper would be inserted on the minutes of the meeting.

[Secretary's Note: A copy of the up to date amendments is attached to Annex A of paper FPC(09)1 and can be accessed on the website via: <http://www.communities.gov.uk/documents/fire/pdf/FPC091.pdf>]

Public Service Abatement Policy

- 3.4 Doug Christie of Thompsons referred to the guidance issued under the cover of circular FPSC 10/2009, and said that in his view the implication that FRAs could abate a member's pension in cases where they had been re-employed to a position outside the role of a firefighter was incorrect. The Chairman responded by explaining that the guidance issued in the circular set out HM Treasury abatement policy on Public Service Pension Schemes.

Revised Commutation Factors

- 3.5 Circular FPSC 7/009, which was issued on 7th September 2009, advised FRAs that the revised commutation factors should be applied to those pensions that came into payment between 22nd August 2006 and 30th September 2007. CLG issued a formal response to the FBU on 15th September 2009 in regards to the commutation grievance. Sean Starbuck confirmed that he was aware of a number of retired FPS members who were still aggrieved and who felt that the revised commutation factors should be backdated further to before 22nd August 2006: the FBU Executive would be discussing the issue at their meeting on 5th December and would clarify their position in writing to CLG thereafter.

Ill-Health Retirement

- 3.6 The Chairman confirmed that circular FPSC 8/2009 was issued on 9th September 2009 and provided FRAs with updated guidance on the consequences of the Court of Appeal judgement in the case of *Marrion and others* and its implications for ill-health retirement procedures. Revised IQMP guidance had also been appended to the circular. Sean Starbuck said that he had discussed the FBU's concerns about

the ALAMA Key Capabilities guidance with Will Davies and amendments had been agreed.

Actuarial Valuation

3.7 Refer to section 5 of the minutes.

Protected Pension Age

- 3.8 The Chairman confirmed that Guidance Note 2/2009 was issued on the 9th November 2009 which set out CLG's understanding of the issue: any grievance would have to be directed to HM Revenue and Customs (HMRC) and it would be inappropriate for CLG to express an opinion.
- 3.9 Ian Hayton of CFOA said that the new tax legislation affected a very small number of chief officers and his view was that the effect was never intended. He had written to HM Treasury asking for clarification on the rules and it was his understanding that the letter was currently with HMRC for reply.

Pensionable Pay

- 3.10 The Chairman said that following comments received in response to committee paper FPC(09)4, CLG had drafted a discussion paper on pensionable pay, emoluments and allowances. The paper would be circulated to FRAs with a view to reaching a consensus. The revised discussion paper had the two preferred options from the original paper with an additional option for purchasing additional pension.
- 3.11 Des Prichard accepted that the existing position was unsatisfactory but questioned whether authorities were contravening the current regulations. The Chairman said that there was no evidence to suggest that any FRAs were acting ultra-vires, however, CLG, as scheme regulator and steward of the financing arrangements for firefighter pensions, needed to ensure that FRAs carefully considered the associated cost implications of making certain elements of pay pensionable.
- 3.12 Des Prichard said that it was imperative that protection was afforded to those firefighters who were currently paying pension contributions on certain elements of their pay that might become ultra-vires when a consensus was reached.
- 3.13 Sean Starbuck said that the FBU welcomed the agreement to find a consistent and clear approach to the treatment of pensionable pay. He said that he was aware of some FRAs using the pensionability of allowances as an inducement to accepting changes to terms and

conditions. He suggested that it would be helpful if CLG issued a guidance note asking FRAs not to introduce new elements of pay as pensionable until a solution had been found.

- 3.14 Fred Walker of LGA reiterated that the introduction of additional elements of pay as pensionable close to the member's retirement had significant cost implications for the pension scheme which was inherently unfair.
- 3.15 James Dalglish asked whether options 1 & 2 were mutually exclusive: prior to issuing the discussion paper, it should be revised to clarify whether APBs (option 2) can be applied to any emoluments of pensionable pay or just those elements that were permitted under option 1. The Chairman explained that as APBs were self financing FRAs would be able to make any allowances pensionable under option 2.
- 3.16 Des Prichard made reference to GAD's valuation report on the pension schemes and said that options 1 & 2 had a direct impact on the continuing affordability, and thus the sustainability, of the existing pension schemes. He recommended that FRAs be advised that the consensus of the FPC was that there should be a prescribed definition for pensionable pay and that FRAs would have the discretion to introduce other emoluments of pay as pensionable under new APB arrangements.
- 3.17 Fred Walker said option 2 would ensure that FRAs picked up the pension liability associated with local decisions, however, as there was a lot of media interest directed towards public service pensions it was important not to give the wrong impression that the discretion of FRAs' to make pay pensionable was being extended. Ian Hayton thought that there should not be a need to restrict FRAs from making local decisions regarding the pensionability of pay if there were no financial implications for the cost of the scheme.
- 3.18 Des Prichard said that whilst he appreciated the reasons for Fred Walker's comment, the FPC could not be expected to understand the intricacies of the local needs and requirements for all FRAs. It was imperative to protect the viability of the pension schemes, the Committee should endorse option 2.
- 3.19 Sean Starbuck asked for clarification on what protection would be given to those members who had entered into a contract with their FRA to pay pension contributions on certain emoluments of pay which later became non-pensionable under the proposed changes. The Chairman responded that option 1 would protect the current position of member's who were paying pension contributions on those elements of their pay

that would cease to be pensionable. Option 2 could include a protection of accrued benefits with past contributions being converted into a pension benefit, or, alternatively, the member's membership could be treated as 2 pensions. Sean Starbuck said that the FBU would expect full protection for all members where a decision had already been made.

- 3.20 The Chairman confirmed that the final discussion paper would be issued under the cover of a pension circular for consultation. The circular would make reference to the Committee's preference for option 2 and would ask FRAs to place a temporary moratorium on the introduction of any elements of pay as pensionable until the matter had been settled.

ACTION: CLG to issue the final discussion paper on pensionable pay for consultation under the cover of a circular

4. Board of Medical Referees: New Contract – FPC(09)7

- 4.1 The Chairman advised members that CLG had signed a new contract with a company called Health Management Ltd (HML) for the provision of the Board of Medical Referees. HML currently managed the police medical appeals for the Home Office and also provided occupational health for the London Fire and Emergency Planning Authority (LFEPA). The company had given assurances on the separation of fire medical appeal work from LFEPA work.
- 4.2 Doug Christie of Thompsons said that he was concerned that because HML also provided occupational health for LFEPA there could be some areas where a conflict of interest could arise. He was also concerned that only one tender application had been received which suggested that the current appeals process was no longer suitable. It was his opinion that the use of an independent tribunal with a legal chairperson would be more appropriate. He also argued that as CLG had a direct interest in the financing of the scheme they should not be directly involved in the process of awarding the contract.
- 4.3 The Chairman responded that whilst he was happy to note the comments, he could not accept the criticisms. It was not uncommon for one company to provide specialist services to organisations that, on the surface, could suggest a conflict with other areas of their business; this would not be a valid reason to reject any tender application. HML was a relatively new company specialising in occupational health and he did not believe that they would not want to prejudice themselves when undertaking Government business. If a problem was to arise then CLG would pursue the matter. Nor could he agree that the receipt of only one tender application for the contract was evidence that the

arrangements were no longer suitable. They had worked well and benefited the pension schemes and their members.: he could see no reason why more companies would not be interested in future contracts.

- 4.4 Doug Christie also made reference to paragraph 8 of committee paper FPC(09)7 which outlined a proposed amendment to provide for the referral back to the Board to reconsider its initial decision or to correct an error in its report. He argued that whilst the amendment should be made to enable the correction of errors, it should exclude the provision to enable the board to reconsider its decision. James Dalgleish said that he could not see how the proposed amendment would disadvantage any party and that it would provide for a cheaper, quicker and easier alternative to Judicial Review. The Chairman concluded the discussion by saying that the referral of the initial decision back to the Board could only happen with the agreement of both parties.

5. Firefighters' Pension Schemes in England: Actuarial Valuation at 31st March 2007 – FPC(09)8

- 5.1 Ian Boonin of GAD introduced the actuarial valuation report on the Firefighters' Pension Schemes. He said that the purpose of the report was to assist the Secretary of State to determine the appropriate employer and employee contribution rates rather than to recommend whether contribution rates should be increased or decreased.

- 5.2 In the following discussion the main points made were:

- the FBU had previously requested the actuarial assumptions that GAD had used. The FBU would want to consider the report further before submitting comments. The Chairman said that he was happy to raise the valuation report as an agenda item at the next FPC meeting or, alternatively, arrange a special meeting.
- the valuation report was based on data as at 31st March 2007, did CLG have more recent data on the current rates of ill-health retirements (IHR) in the Fire and Rescue Service. The Chairman confirmed that early figures for 2008/09 suggested that the downward trend reported to the Review Group in 2008 had levelled off at just under 3 per thousand, however, it was still uncertain how the Marrion judgement and the new ill-health guidance might impact on future rates. There was an expectation that the rates would rise but no certainty on how much;
- paragraph 5.16 of the valuation report gave a projected 89.1 years life expectancy for a new entrant firefighter and this was greater than that for the general population. Ian Boonin explained that the projected life expectancy was based on firefighter experience

between 2003 and 2007 and took account of improved mortality rates in the general population. There was evidence to suggest that members of occupational pension schemes tended to live longer than the general population;

- what would be the next steps were following the publication of the valuation report? The Chairman explained that the findings of the report would inform future decisions with regard to the scheme, including the appropriate employee/employer contribution rates.

5.3 The Chairman invited comments on the valuation report to be discussed at the next meeting or special meeting (refer to Secretary's note at paragraph 5.2).

Actions: Ian Boonin to provide the relevant data and a note to explain how the projected life expectancy of 89.1 years for a new entrant firefighter had been determined

Members to provide comments to Secretary by 18 December to enable CLG to decide whether to arrange an ad hoc meeting of the Committee for the purpose of discussing the report.

6. Any Other Business

6.1 The Chairman conveyed the Committee's best wishes for the future to Jim Preston in his new job and to Bertie Kennedy in his retirement.

7. Dates of Future Meetings

11 January 2010 (**1pm**) – if required to discuss valuation report

18 February 2010 (**11am**)

13 May 2010 (**11am**)

25 August 2010 (**11am**)

17 November 2010 (**11am**)

***Communities and Local Government
November 2009***

Annex A

Attendees

Martin Hill (Chairman)	DCLG
Andy Boorman	DCLG
Anthony Mooney (Secretary)	DCLG
Ian Boonin	GAD
Orla Nally	GAD
Fred Walker	LGA
James Dalgleish	Advisor to LGA
Jim Preston	SPPA
Jenny Coltman	SPPA
Bertie Kennedy	DHSSPSNI
Gillian McMaster	DHSSPSNI
Brian Wallace	COSLA
Linda Ford	NIFRS
Erika Beattie	NIFRS
Sean Starbuck	FBU
Tam Mitchell	FBU
Doug Christie	Thompsons Solicitors
Ian Hayton	CFOA
Des Prichard	APFO
Tristan Ashby	RFU

Apologies

Eunice Heaney	Pensions Consultant
Terry McGonigal	NIFRS
John Terry	COSLA
Glyn Morgan	FOA
Craig Thomson	FOA
John Barton	RFU
Dr Will Davies	ALAMA