



Firefighters' Pension Scheme Circular

Circular Number:	FPSC 9/2009	Date Issued:	15 September 2009
Action:	For Information		
Title:	<i>FIREFIGHTERS' PENSION SCHEME 1992 – COMMUTATION GRIEVANCE</i>		
Issued by:	Martin Hill Local Government and Firefighters' Pensions Division		

Summary:	This circular provides Fire and Rescue Authorities with a copy of the CLG response to the complaints from retired firefighters relating to the introduction of new commutation factors in 2008.
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Addressed to:	Please Forward to:
The Clerk to the Fire and Rescue Authority	Pension and human resources managers
The Chief Fire Officer	Treasurers
	Finance Directors

Enquiries:

Pensions Team Leader:

Martin Hill	martin.hill@communities.gsi.gov.uk	020 7944 8641
Andy Boorman	andy.boorman@communities.gsi.gov.uk	020 7944 8123
Anthony Mooney	anthony.mooney@communities.gsi.gov.uk	020 7944 8087

Medical Appeals

Philip Brown	philip.brown@communities.gsi.gov.uk	020 7944 6787
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General Enquiries: firepensions@communities.gsi.gov.uk

Firefighters' Pension Scheme Website: www.communities.gov.uk/firepensions

1. CLG responded on 7th September to the complaints from retired firefighters about the introduction of new commutation factors in 2008. The text of the letter is annexed for the information of fire and rescue authorities.

A handwritten signature in blue ink that reads "Martin Hill". The signature is written in a cursive style and is positioned above a horizontal blue line that serves as a signature separator.

Martin Hill

Letter of 7th September 2009 in response to Commutation Grievance

FIREFIGHTERS' PENSION SCHEME: COMMUTATION FACTORS

We have now had the opportunity to consider the grievances from retired firefighters and, in particular, the implications of the judgment of Mrs Justice Cox in *R (Police Federation of England and Wales) v Secretary of State for the Home Department* [2009] EWHC 488 (Admin), in relation to the Police Pension Scheme for your complaint in respect of the Firefighters' Pension Scheme (**FPS**).

This response is sent on behalf of the Department for Communities and Local Government (**CLG**) alone. The Government Actuary's Department (GAD) will write separately.

References in this document to "the complaint" are to the model complaint form, on which all the individual complaints are made.

Procedure and jurisdiction

At paragraph 26 of your complaint, you say that your complaint is addressed to CLG and GAD "as persons responsible for the management of the FPS, within the meaning of section 146 of the Pension Schemes Act 1993" (**the 1993 Act**).

CLG is not a "person responsible for the management of the FPS" for the reasons set out below:

- (a) Section 146(3) of the 1993 Act, which is in Part X, provides that only the trustees or managers, the employer and certain others specified in Regulations under s. 146(4) are "responsible for the management of the scheme" within that Part of the 1993 Act.
- (b) CLG does not fall within any of these categories in relation to the FPS.
- (c) As we have already explained, the FPS is managed by the fire and rescue authority with whom firefighters were last employed and not by CLG. The role of the Secretary of State for Communities and Local Government in relation to the FPS is limited to making the regulations concerning the provisions of the FPS, the referral of any appeal by a firefighter to the Board of Medical Referees and the management and administration of the firefighters' pension fund, with certain other incidental functions relating to the issue of certificates of pensionable service and the withdrawal of pensions. In this regard the position of the Secretary of State for Communities and Local Government vis-a-vis the FPS is no different to that of the Home Secretary vis-a-vis the Police Pension Scheme. Cox J held in relation to the Police Pension Scheme at [96] that:

"It is... incorrect, in my view, to describe the Home Secretary as "the administrator of the scheme"... There is no provision in either the 2007 Regulations or the Police Act which gives her such a role There is a clear distinction, as it seems to me, between the power to make regulations under the 1976 Act... and the operation of the Regulations themselves. The Home Secretary clearly has a functions in relation to the former... The Regulations themselves, however, are not concerned with matters of general policy but create rights for individual police officers and obligations to be fulfilled by each police authority in its own area."
- (d) In any event, your complaint relates to the promulgation of actuarial tables under Rule B7(3) of the FPS. As far as that is concerned, Cox J (whose reasoning in this respect is as applicable to the FPS as it was to the Police Pension Scheme) held at [119] that

"[t]he Regulation does not in its terms confer any power upon the Home Secretary to commission reviews of commutation factors or decide when tables prepared by the Actuary are to come into effect".

It follows that your complaint relates to a matter which, applying Cox J's reasoning, is not a management function of DCLG under the Regulations.

The other elements of your complaint are addressed below without prejudice to the contention, set out above, that this grievance is not properly directed at DCLG under the terms of s. 146 of the Pension Schemes Act 1993 and s. 50 of the Pensions Act 1995.

Backdating of revised factors

Cox J held that reg. B7(7) of the Police Pensions Regulations 1987 (which is the materially identical analogue of Rule B7(3) of the FPS) conferred on the Government Actuary an obligation to prepare actuarial tables for calculating the actuarial equivalent of the surrendered portion of a pension; that the Home Secretary has no role to play in deciding when new tables come into force; and that "the tables come into effect on the date when they are prepared": see at [126]. "Prepared" for these purposes means the same as "issued": see [120]-[121].

With respect to the police scheme, the updated tables were "prepared" on 1 December 2006. With respect to the FPS, the updated tables were sent to the relevant Secretary of State (the Secretary of State for Communities and Local Government) under cover of a letter dated 22 August 2006 setting out "the assumptions which the Government Actuary would propose to adopt in recommending commutation factors in accordance with Regulation B7(3)."

Applying the reasoning of Cox J, 22 August 2006 was, for the FPS, the date on which the new tables were "prepared" or "issued".

We have therefore issued guidance to fire and rescue authorities on the payment of these additional sums to members of the FPS 1992 who retired between 22 August 2006 and 30th September 2007. Interest will be paid and any unauthorised payment charges which may be levied by HMRC will be paid also.

Other aspects of the grievance

As we understand it, your complaint against CLG is that CLG should have "put proper administrative arrangements in place for the periodic review of the factors" (complaint, para. 10). As a complaint against CLG, this is not sustainable in the light of Cox J's judgment. Prior to Cox J's judgment, both the Home Secretary and the Secretary of State for Communities and Local Government previously considered that they had a role to play in putting proper administrative arrangements in place for review of the actuarial factors. The thrust of Cox J's judgment (set out in the passages quoted above) was **not** that she should have put proper administrative arrangements in place for a review of the factors, but rather that – on a proper construction of the Regulation – she should have had no involvement at all in the review of the factors or in the preparation or issue of tables. In those circumstances, we do not see how it can now be said that CLG's actions constitute "maladministration in connection with any act or omission of a person responsible for the management of the scheme" within the meaning of s. 146(1) of the 1993 Act.

In any event, it is not accepted that the factors should have been reviewed or that the tables should have been updated prior to 22 August 2006. However, in the light of the above matters, it would not be sensible to respond point by point to your arguments in this regard at this stage.