

## III Health Pension Case Outcome

### Report of the Chief Fire Officer

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#### 1 Purpose of Report

This report informs the Human Resources (HR) Committee of the outcome of the ill-health pensions Court of Appeal case which has moved towards resolving the issue of contested guidance for ill-health retirements.

#### 2 Recommendations

The Committee is asked to note the report

#### 3 Background

Guidance issued in 2004 enabled firefighters to access an ill-health pension in circumstances where their health was such that they were unable to perform the duties for which they were employed and where no suitable alternative employment/redeployment was available.

In 2006 this guidance was revised to create the position that if a firefighter was able to perform any part of the role for which they were employed, they were not entitled to an ill-health pension even where no redeployment opportunities existed.

The guidance was further updated in 2008 and the changes largely indicated that the position had reverted to that set out in the 2004 guidance.

## **4 Court of Appeal decision**

Three London firefighters affected by the change in the guidance and unable to receive an ill-health pension took a case through the courts to challenge the decision and thereby challenge the guidance. In a judgement issued on 6 April 2009 the Court of Appeal found that the approach recommended within the 2006 guidance was flawed and indicated that the updated 2008 guidance 'is in some disarray, but, in effect, its guidance has returned to the 2004 guidance'.

In summary, the Court of Appeal found in favour of the appellants stating that 'these appeals...should be allowed'. In issuing the judgement Communities and Local Government indicated that a further circular will follow but that the judgement endorsed the position outlined in Fire Pensions Scheme Circular 8/2008.

## **5 Current position**

It is important to note that the guidance referred to above is non-statutory. Guidance issued by the Secretary of State in conjunction with the Ill-Health Review Group in 2008 explained it as non-binding advice intended to assist decision-taking authorities in the exercise of their statutory duties. This guidance concludes by stating that 'the Courts alone can provide an authoritative interpretation of legislation and so any view expressed in any guidance, whether formal or informal, issued by the Secretary of State is subject to this.'

We are now awaiting further guidance from CLG in order that current or future employees affected may move through the appropriate processes to access an ill-health pension as and when they are entitled to do so. On 12 May 2009 the CLG indicated that they expect to issue something in the next couple of weeks.

## **6 Financial Implications**

The change in the legal position will mean that where applicable employees could be eligible for ill-health retirements and where this occurs the Authority must contribute to the national pension scheme in accordance with the rules of the scheme and the financial parameters therein. The Treasurer and the Principal Accountant are aware of the judgement and standard budgetary provision is made each year lest ill-health retirement(s) are necessary.

## **7 Legal Comment**

R (Marrion and others) v Board of Medical Referees and others [2009] EWCA Civ 450; [2009] WLR (D) 135

The Court of Appeal on 6 April 2009 held that where a firefighter applied for a disability pension, the question to be resolved by the independent qualified medical practitioner and on appeal by the Board of Medical Referees under the Firefighters' Pension Scheme was whether the firefighter was subject to incapacity for the performance of his operational firefighting duty and any other duties within the definition of "regular firefighter" and within his contract which it was proposed that he perform, but not any additional duties. Where no redeployment away from operational firefighting was available, the question stopped with incapacity for the performance of operational firefighting. It was not within the board's jurisdiction to give a binding decision which trespassed on issues which were not part of the firefighter's appeal.

The Committee should note this report and be aware of the possible changes to the guidance brought about by his case.

## 8 Equality Impact Assessment

This report informs Members of the result of an Appeal Court Judgment regarding guidance applicable to Fire and Rescue Service staff nationally. Any impact on people will be in accordance with the resultant legal position and an Equality Impact Assessment is therefore unnecessary.

## 9 Appendices

There are no appendices attached to this report.

## 10 Background Papers

There are no background papers associated with this report.

Implications of all of the following have been considered and, where they are significant (i.e. marked with an asterisk), the implications are detailed within the report itself.

Balanced Score Card		Integrated Risk Management Planning	
Business Continuity Planning		Legal	*
Capacity	*	Member Involvement	
Civil Contingencies Act		National Framework	
Comprehensive Performance Assessment		Operational Assurance	
Efficiency Savings		Retained	
Environmental		Risk and Insurance	
Financial	*	Staff	*
Fire Control/Fire Link		Strategic Planning	
Information Communications and Technology		West Midlands Regional Management Board	
Freedom of Information / Data Protection / Environmental Information		Equality Impact Assessment	