

Ill-Health Retirement and the Firefighter Pension Schemes

Report of the Chief Fire Officer

For further information about this report please contact Alan Taylor, Chief Fire Officer, on 01743 260201 or Louise McKenzie, Assistant Chief Officer, on 01743 260280.

1 Purpose of Report

To inform the Human Resources Committee about the current situation regarding ill-health retirement under the Firefighter Pensions Schemes and the request received from the national Fire Brigades Union (FBU).

2 Recommendations

That Members agree whether:

- a) They will support the FBU position; and
- b) They wish to recommend that the Fire Authority adopt the position of the Chief Fire Officers Association on this matter.

3 Background

The new Firefighter Pension Scheme was introduced with effect from 6 April 2006 for new entrants to operational roles in the Fire and Rescue Service. At the same time the (then) current 1992 Firefighters' Pension Scheme was revised in several areas, the most significant being ill-health retirements.

The main change to the 1992 Scheme was to introduce two 'tiers' of ill-health retirement, a lower and a higher tier, which would be paid dependent upon the degree of an individual's disability and the impact on the ability of that individual to work. The changes also recognised that the Disability Discrimination Act (DDA) became applicable to operational roles within the Fire and Rescue Service in 2004 and Services have, therefore, been obliged to consider making reasonable adjustment or seeking redeployment



opportunities for operational personnel meeting the definition of a 'disabled person' under the Act. This meant that the Pension Scheme had to be changed to enable those people re-deployed into non-operational roles to remain within the Pension Scheme.

4 The Issue under Debate

These changes have since been implemented in various authorities and this has led to definitions and interpretations of the changes being needed in order to 'use' the new schemes.

As a result of defined and interpreted meaning when dealing with real cases, a situation has arisen within London Fire Authority (LFEPA), which has been a cause of concern and confusion for all concerned. In summary, the FBU is currently in dispute with Communities and Local Government (CLG) over the ill-health provision within the Firefighters Pension Scheme and the associated guidance issued by CLG and the Guidance for Independent Qualified Medical Practitioners (IQMP). This is because, having appealed the level of pension received, three retired members of the FBU were informed by LFEPA that their pensions would cease as the Medical Appeals Board had considered the guidance provided to them and concluded that the individuals were capable of performing some of the duties of a regular firefighter. They concluded they were not, therefore, eligible for either tier of ill-health retirement. With no posts to redeploy into these firefighters found themselves without a job or a pension.

The FBU contends that the guidance relied upon to come to these decisions was inconsistent with the guidance issued in 2004, when the changes to the Scheme were consulted upon. The 2004 guidance aimed to enable firefighters to remain in the Firefighters' Pension Scheme when re-deployed to non-operational duties.

5 Stakeholder positions

The FBU

The FBU has written to Chief Fire Officers nationally (see Appendix) detailing their concerns and to seek their support in the following:

'... pressing the CLG, and the relevant authorities within the developed administrations, to amend the guidance and return to the position of 2004 i.e. to return to the guidance issued at the time the change to the Scheme was actually made.

'if you are willing to support us in this, I would ask that you write to the CLG making your views known and that you copy us into the correspondence.'



The Chief Fire Officers Association (CFOA)

CFOA has been approached by the FBU and other staff side organisations seeking support. Their position, as quoted in Circular 2007/1035 issued on 12 November 2007, is:

“A regular firefighter who is permanently disabled for the performance of the firefighting element of his current duties, but who remains fit to perform other duties appropriate to his/her role as a firefighter, is entitled to a proper determination under Part H of the question whether he/she should be medically retired under Rule A15 (with an ill health award under Rule B3) unless he/she is redeployed, without a break in continuity of employment, to a different job (in which he/she is employed by the Fire and Rescue Authority as a firefighter) to undertake other duties appropriate to his/her role apart from engaging in firefighting”.

In essence CFOA support a return to the interpretation of 2004, i.e. where, if a FRA cannot offer other employment, fitness to perform other duties would not be relevant and the person may be retired with a lower tier ill-health award however **but would seek any necessary amendments to strengthen the FRA’s responsibility to positively consider redeployment in the first instance.**

In addition, CFOA recognise that current CLG and IQMP guidance would benefit from an immediate review.”

6 Matter for Decision

The matters for decision are therefore:

- a) Whether the Human Resources Committee wishes to support the request of the FBU to write to CLG; and
- b) Whether the CFOA position should be recommended to Shropshire and Wrekin Fire Authority

7 Financial Implications

There are no financial implications arising from this report.

8 Legal Comment

The legal position has been clarified in the body of this report. The Fire Authority must ensure they act within the rules as they currently exist.



9 Equality Impact Assessment

As this report relates to the rules and guidance established by the CLG on the application of the Firefighters Pension Scheme, and acting outside of those rules and guidance would be acting ultra vires, we cannot conduct an internal EQIA.

10 Appendix

Letter from FBU to Chief Fire Officer dated 4 October 2007 regarding ill-health retirements and the Firefighter Pension Schemes

11 Background Papers

Fire Service Circular 44/2004: Review of Pension Arrangements for Firefighters. Publication of proposals for (i) New Firefighters' Pension Scheme and (ii) Proposals for Further Amendments to the current Firefighters' Pension Scheme

Guidance for Independent Qualified Medical Practitioners (IQMP).
<http://www.communities.gov.uk/documents/fire/pdf/fireigmps>

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	*





Shropshire Fire & Rescue Service EQIA number

Initial Equality Impact Assessment Form

Directorate	Human Resources Training and Development	Department/Section	
Name of officer	Louise McKenzie	Job title	Assistant Chief Officer
Name of Policy/Service to be assessed	Ill Health Retirements and the Firefighter Pension Schemes	Date of assessment	20 November 2007
New or existing policy	N / E		

1. Briefly describe the aims, objectives and purpose of the policy/service	As this paper relates to the rules and guidance established by the CLG on the application of the Firefighters Pension Scheme, and acting outside of those rules and guidance would be acting ultra vires we cannot conduct and internal EQIA.		
2. Are there any associated objectives of the policy/service?			
3. Who is intended to benefit from the policy/service and in what way?			
4. What outcomes are wanted from this policy/service?			
5. Who are the main stakeholders in relation to the policy/service?			
6. Who implements the policy/service and who is responsible for this?			
7. Are there any concerns that this policy/service could have a differential impact on the following groups and what existing evidence do you have for this? Yes or No, please detail in boxes below.			
8. Age	Y	N	
9. Disability	Y	N	
10. Gender	Y	N	



11. Race	Y	N	
12. Religion or belief	Y	N	
13. Sexual orientation	Y	N	
14. Dependant/caring responsibilities	Y	N	
15. Could the differential impact identified in 7-14 amount to there being the potential for adverse impact in this policy/service?	Y	N	Please detail
16. Can this adverse impact be justified on the grounds of promoting equality of opportunity for one group or another reason?	Y	N	Please explain for each, equality heading on a separate piece of paper.
17. Have you consulted those who are likely to be affected by the policy/service?	Y	N	List those groups/individuals that have been consulted.
18. Should the policy proceed to a full impact assessment?	Y	N	Please detail
19. Date by which full impact assessment to be completed			
20. Reason for non completion	As this paper relates to the rules and guidance established by the CLG on the application of the Firefighters Pension Scheme, and acting outside of those rules and guidance would be acting ultra vires we cannot conduct and internal EQIA.		

I am satisfied that this policy has been successfully impact assessed.

I understand the Impact Assessment of this policy is a statutory obligation and that, as owners of this policy, we take responsibility for the completion and quality of this process.

Signed: (Assessing person)	Louise McKenzie	Date:	20/11/07
Signed: (Line Manager)		Date:	
Please note that this impact assessment will be scrutinised by the E&D Officer			





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The Fire Brigade

GENERAL SECRETARY : MATT WRACK

Appendix to report on
Ill Health Retirement and the Firefighter
Pension Schemes
Shropshire and Wrekin Fire Authority
Human Resources Committee
6 December 2007

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Our Ref: MW/sll

4 October 2007

Mr Alan Taylor
Chief Fire Officer
Shropshire Fire & Rescue
St Michael's Street
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Shropshire
SY1 2HJ

2007 130 01

Dear Mr Taylor

ILL-HEALTH RETIREMENT UNDER THE FIREFIGHTER PENSION SCHEMES

In July three retired members of the FBU were informed by the Fire Authority in London (LFEPa) that their pensions would cease.

This decision follows medical appeals on the issue of injury awards by the three under the terms of the Firefighters' Pension Scheme (FPS). They had already been awarded ill-health pensions and registered an appeal as is their right under the Pension Scheme. The Board of Medical Referees which hears appeals did not answer the questions on which the appeals had been lodged, but instead concluded that the individuals were capable of performing *some* of the duties within the Firefighter Role Map and should not therefore receive a pension at all. As a result of this, LFEPa (following its own legal advice) has concluded that they can no longer pay the ill-health pension. The three retired members were informed that their pensions would cease in August. That has now happened.

This has created an unprecedented situation where three members have been retired from service - by a decision of the Fire Authority - yet have now had their pension stopped and are subsequently without either a job or a pension.

CLG Guidance on ill-health retirements

The decision of the Board of Medical Referees in this case was based upon guidance provided by CLG in relation to ill-health retirements under the FPS.

This guidance follows changes to the Scheme which altered the definition of a Firefighter. The aim of this change - when introduced - was to allow more flexibility and to allow the possibility of re-deployment in cases where a member could be found other suitable work within the Service but could not continue in an operational role.



recycled paper

The initial guidance from ODPM (FSC 30/2004) included the following phrase:

If the FRA cannot offer other employment, fitness to perform other duties would not be relevant and the person may be retired with an ill-health award.

Subsequently, this guidance has been amended in FPS Circular 11/2006 (4th September 2006) and the key phrase above has been removed.

I include extracts from the two versions of ODPM/CLG guidance in relation to redeployment/retirement below (my emphasis):

2004 Guidance

Eligibility for full membership of the FPS is limited to regular firefighters only. The definition of "regular firefighter" includes a requirement to engage in firefighting. This remains a term of eligibility for joining the FPS. However, the definition has been amended to allow a firefighter who subsequently becomes permanently disabled for firefighting while remaining fit for other related duties to continue as a member of the FPS. This is on condition that there has been no break in service. Consequently, if a FRA is of the view that the retention of a firefighter would be of value to the service, redeployment to other duties, as appropriate to the role of a firefighter, should be considered and would be allowable under FPS rules. If the FRA cannot offer other employment, fitness to perform other duties would not be relevant and the person may be retired with an ill-health award.

2006 Guidance

Eligibility for full membership of the FPS is limited to regular firefighters only. The definition of "regular firefighter" includes 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 in assessing whether a regular firefighter ought to retire on the grounds that he is permanently disabled under Rule A15 is whether he is permanently disabled for firefighting and for performing other duties appropriate to the role.

Recent CLG advice issued to IQMP's

It is clear from the extracts above that CLG have re-written the guidance to the detriment of members of the Pension Scheme and in a clear departure from the position outlined in briefings given to Parliament at the time the scheme was amended.

CLG have recently issued advice to the Independent Qualified Medical Practitioners appointed under the Scheme (FPSC 8/2007, 5 September 2007). The effect of this circular will be to apply this same logic to all cases where a medical retirement would be considered. This advice includes the following section (my emphasis):

3.16 A firefighter is permanently disabled if he/she is medically unfit to carry out all the duties expected of him/her as listed in the role map for his/her role (rank). Provided the member can carry out one of the duties of the role he/she cannot be permanently unfit. The decision about permanent disablement will be specific to the role of the firefighter, so it is important for the IQMP to be familiar with the different requirements of the various roles within the Fire and Rescue Service.

It is difficult to imagine circumstances in which an individual could not perform *one* of the duties of the role. The effect of this guidance will therefore be to effectively end ill-health retirement under the FPS and NFPS. That was clearly not the intent of the changes made to the Statutory Instrument in 2004.

The aim of the original change to the Scheme was to allow greater flexibility into the Scheme by allowing re-deployment to non-operational duties if this was appropriate. However, under the new guidance a pension will not be paid even if no such job exists. The effect of these changes will be to place Firefighters in limbo. They will not be able to continue in their profession due to ill-health. They will not be entitled to a pension. They will also not be guaranteed any employment since there are few, if any, such (non-operational) jobs in existence within the Fire and Rescue Service.

Views of Stakeholders

I am sure you will appreciate the concerns of the FBU over this matter and the anger of Firefighters. Members of the FPS pay a contribution which is considerably higher than that in similar schemes precisely to take account of earlier retirement due to age or ill-health.

I therefore seek your support in pressing CLG, and the relevant authorities within the devolved administrations, to amend the guidance issued and return to the position of 2004 i.e. to return to the guidance issued at the time the change to the Scheme was actually made.

If you are willing to support us in this, I would ask that you write to CLG making your views known and that you copy us into the correspondence.

Alternative arrangements

I am also concerned to hear that plans are already afoot to suggest alternative arrangements for Scheme members caught up by this new position. The Firefighters' Pensions Committee was recently informed that CFOA intend to produce proposals for an alternative form of compensation which would lie outside the Pension Scheme.

Such a measure would be entirely inappropriate and would do nothing to assist members of the Pension Scheme caught up by the CLG guidance. It would inevitably be worse than any payments under the Pension Scheme and would be likely to adversely affect both employees and employers by introducing new and additional costs to both sides.

Finally, the FBU cannot accept that employees of the Fire and Rescue Service who are unable to work in the Service because of a medical condition should be sacked and left without a job or a pension when they have done nothing wrong. Quite simply, it is completely unjust and inequitable. It is also completely different to the position of members in the Local Government Pension Scheme.

I ask for your support in this issue and look forward to your response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Wrack', written in a cursive style.

**MATT WRACK
GENERAL SECRETARY**