

FOA Comment following FPC 08, 12th December 2005

The following comment is offered following the above meeting in relation to areas of the draft Blueprint and application of the new pension scheme have still to be agreed. Specific items covered below are G1 Pensionable Pay and H2 Medical appeals, however, part c. of the G2 section deals with aspects of the scheme's application to members serving on retained duty systems.

G1: Pensionable Pay

The following comments reiterate those made in our response to the initial consultation documents for a proposed new pension scheme and for amendments to the existing scheme. However, they have been amended to take account of recent discussions within the Firefighters' Pension Committee.

Whatever elements of pay may or may not be pensionable, we consider that this issue may be resolved by provisions for protection of benefits through 'step back' arrangements or split pension arrangements as proposed for the new FPS. Such arrangements would provide FRAs and individuals with sufficient flexibility for movement in and out of the flexible duty system whilst preserving benefits accrued from higher contribution payments. It is accepted that the value of protected benefits relative to final salary may decrease with the passage of time but we think it would be reasonable to build in some element of index linking.

Protection provisions may be applied to FDS, responsibility or other payments received for a significant portion of service.

a. Determination of pensionable pay

At the 12th December meeting, Mr Chadbon of the RFU suggested that "pensionable pay" might be taken as the elements of pay that are subject to National Insurance contributions. This suggestion appeared to be dismissed during the meeting and discussion centred on the fact that the Firefighters' Pension scheme is a 'contracted out scheme and as such, no benefit is obtained from NI contributions.

We feel that the point may have been missed and we are sympathetic to Mr Chadbon's suggestion in that could provide a method of calculating pensionable pay. However, it is recognised that it may not be appropriate to treat all elements of income that attract NI contributions as pensionable pay.

We are inclined towards any approach that bases pensionable pay on an existing method for differentiating between elements of income. However, other than those used for income tax and National Insurance, we are not aware of such a system. We will be interested in the findings of ODPM consultation with pension and payroll administrators in the hope that a suitable approach may be highlighted.

Deciding exactly which elements of income are considered pensionable is likely to be a difficult issue to resolve. If it is of any assistance, we accept that compensatory payments made should not be pensionable as they are not earned, i.e. the payment is not made as a reward for work done.

Our stance is that pensionable pay should be associated with payments made for performing a particular job or role (the original meaning of role). Included in this category of payment would be any allowances that are specific to the job being undertaken. This would, therefore, cover flexible duty and responsibility payments for specialised posts. Other allowances such as CPD payments that are not specific to any post would not be pensionable.

As a rule of thumb, we consider that the salary for any post that may be occupied for an indefinite long-term period should be regarded as pensionable. In this context, salary would include any payments made specifically for undertaking the duties associated with that post.

Provided that pension benefit protection arrangements feature within the FPS, we do not believe that the use of this approach would present a barrier to persons stepping down from flexible-duty or specialist posts that attract additional payments.

b. Flexible duty allowance

To our knowledge, all officers currently receiving Flexible Duty Allowance are integral to the maintenance of the fire and rescue services operational response. Once occupying a flexible duty post any further promotion will be into a post that also forms part of this response. Staff occupy positions that may appear administrative but it must not be forgotten that they retain an operational commitment, often responding to incidents outside office hours, unseen by their colleagues. Considering that working the FDS requires a commitment to be available for some 76 hours per week at a ridiculously low hourly rate, it seems outrageous that this should not be considered pensionable. We cannot imagine an occupation where such a large proportion of regular income would be tolerated as being non-pensionable – even with a non-contributory pension scheme; would ministers accept a fifth of their income being non-pensionable?

Whilst stressing that there is currently no situation where FDS officers do not fulfil operational roles, we accept that this may not be the case in the future as non-operational posts may be filled by suitable former operational staff. We accept that it might, in the future, be possible to lose this allowance where a person moves to a non-operational role. In such cases, we would call for some protection of benefits since we would consider it unjust not to take account of higher income that may have been enjoyed for many years prior to ceasing operational service.

We suggest that the FDS allowance is integral to role of an operational manager. We believe that such regular payments, upon which staff depend to maintain their lifestyle, should be treated as pensionable.

c. Firefighters serving on Retained Duty Systems

We feel that the major difficulty here is not a pension issue but one that relates to lack of clear national leadership or direction. National reviews and Framework documents point the service in particular directions but getting there has been left to FRAs and CFOA who, in practice seem unable to deliver common solutions to common problems. The retained duty system is a case in point where expectations were raised in terms of delivering a new style of service as a through the national review of retained service provision.

We cannot see how the income of a retained duty system firefighter can be broken down into separate elements for pension purposes. Ideally, to properly incorporate retained firefighters into the FPS, it will be necessary to move towards a salaried system where the level of income associated with a particular role is defined. It would also be the simplest way to deal with the matter. Unless the same approach is applied nationally, non-salaried retained firefighters would be left in an inequitable position where it may be very difficult to calculate equivalence with their salaried counterparts.

It seems that discretion to tailor duty systems to local needs will continue to conflict with attempts to maintain an over-arching national approach unless some parameters are defined by central direction or guidance. The problem of inequity is likely to continue unless a consistent national approach towards the retained duty system is established. We will, therefore, not attempt to offer solutions to the matter of retained firefighter pensions until some clarity is established through clear leadership and commitment to deliver consistency is visible from ODPM, Employers or CFOA. The FOA will be more than happy to contribute and assist once such leadership is in place and clear objectives have been established.

That said, as an observation, it seems that some system of wholetime equivalence is required to achieve equality between all firefighting roles whether whole or part-time. The level of income received by firefighters on the traditional retained duty system is perhaps no as significant as the number of hours worked and pension benefits might be determined by the number of hours worked. The annual average hours might then be used to calculate pensionable pay by applying the proportion of annual hours worked on the RDS to the pay of a full-time firefighter in an equivalent role. Difficulties still exist in that payments received for standby duties would not be taken into account unless some allowance were made for such time but, here again, we encounter issues of parity with the full-time salaried firefighter who may available for duty for fewer hours yet be paid more and receive a higher pension.

c. Responsibility payments

The change from rank to role has introduced the prospect of locally determined responsibility payments for staff undertaking specialised roles where they might not also have operational responsibilities. Such roles would tend to be those associated with organisational development, usually within service headquarters. It could be argued that such posts are essential to delivering effective services and implementing the modernisation agenda. Failure to recognise the contribution of staff undertaking such roles could create a disincentive to staff - to the detriment of the service. Again, we accept that specialist posts are often temporary for the duration of a specific project and that people may revert to their substantive post with a resultant loss of any allowance. We strongly urge that fire and rescue authorities automatically purchase additional benefits for staff in receipt of responsibility payments in the same way as we suggested for staff working a Flexible Duty System.

For all of the above scenarios, we believe that not considering payments as pensionable would have serious consequences in that it could become very difficult to attract the appropriate calibre of person to undertake these roles.

We also consider that treating such payments as non-pensionable would contradict stated government policy of allowing people to maintain living standards. Most people fulfilling the above roles will do so for long periods, if not throughout their service. Consequently, their lifestyles will be tailored to their income and where a person retires from the service in a role for which an allowance is payable, their income would drastically reduce if their pension did not take account of allowances.

Scheme members may occupy roles attracting responsibility payments for several years and we support the retention of skilled and experienced staff in specialised posts. All too often there is a rate of staff turnover in such posts, making it difficult to provide continuity of service. This can be detrimental to service improvement or the maintenance of standards. The ability to count a responsibility payment as pensionable could provide a welcome incentive for people to remain in specialised roles. The Independent Review of the Fire Service identified gaps in the business skills and we believe that this is largely due to the transitory nature of uniformed managers within the service. The 2003 pay settlement and its offer of greater rewards to middle managers with responsibility for stations can only worsen this situation by reducing the incentive to fill specialist roles. Where people do so to gain promotion, they will quickly seek to transfer to more operationally orientated posts.

Failure to make responsibility payments pensionable can only exacerbate this situation and we asked that serious consideration be given to include such payments in pensionable pay whilst also making provision for protection of accrued benefits should members move to lower paid roles.

Here again, we feel that the absence of a consistent approach by FRAs will create difficulties leading to inequality in the benefits and rewards available to staff members occupying identical roles in different fire and rescue services. We can only offer comment on matters of principles that might be enshrined within the FPS, effective variations in local conditions of service, we feel, is a matter for resolution by other bodies.

H2: Medical Appeals

Medical Appeal Boards are available as the means to challenge decisions on medical matters but dealing with the appeal process can be time-consuming and costly for both the authority and the body representing the appellant. It would be helpful to provide an informal mechanism for reconsideration of decisions to resolve relatively minor differences of opinion or to consider supporting evidence not previously available to the authority. Such a mechanism might reduce the number of appeals that proceed to full appeal.

- A clause in H2 might help – where the member has medical evidence to support his claim he might be allowed to present this to the authority asking for reconsideration – persuasive evidence might avoid costly appeals.
- Does ODPM monitoring activity consider whether the outcome of an appeal was predictable given the initial medical opinion and the information available

Whilst the requirement to seek independent medical opinion is helpful, many problems associated with ill-health and injury matters may still be due to inconsistency in the opinions given by Medical Advisors. We, again, suggest that centrally sponsored standards and guidance are essential if any degree of consistency is to be achieved. We understand the ODPM reluctance to produce guidance and suggest that it could be in the interest of employers to take ownership of this issue by collectively commissioning the production of guidance through their representative organisations.