

Fire Officers' Association Response to Consultation Document

Amendments to the Firefighters' Pension Scheme (1992) and the New Firefighters' Pension Scheme (2006)

1992 Firefighters' Pension Scheme, Rule A14: Compulsory retirement on Grounds of Efficiency

We are pleased that the flaws of the existing provision are recognised. One fire and rescue service recently proposed to apply the rule and we highlighted potential discrimination on grounds of age as the basis of our response. We would have certainly applied this argument as the basis of a more robust challenge had the proposal been developed further.

We fully support the proposed amendment since we consider that it is not appropriate to continue with a provision that appears to circumvent accepted employment legislation and protocol relating to fair selection of staff for redundancy.

We are conscious that fire authorities and Scheme members benefiting from the amendment may fall foul of HMRC tax limits due to the higher commutation rate. This will need to be explained in any guidance issued with the amendment order so that individuals and fire and rescue authorities (in collaboration) can take appropriate steps to avoid being caught out unwittingly.

Although rule A15 is omitted for good reasons, we recommend that the opportunity is taken to reinforce this by stating that the circumstances in which there is entitlement to an ill-health pension are where the fire and rescue authority determine to terminate the employment by reason of the member's permanent disablement (as defined by the Firefighters Pension Schemes). This would not repeat Rule A15 but it would reinforce the fire and rescue authority's power to make an ill-health award in these circumstances.

Benefits Up-rating: Change from RPI to CPI

We disagree with the proposal since it results from the Government's overarching imposition of a change to what we consider to be accrued benefits, i.e. pensions in payment and deferred benefits.

However, we recognise that this matter will be resolved through the Courts and that whatever comment we make in this response is largely arbitrary.

Firefighters' Pension Scheme: Rule B7, Commutation – General Provision

Whilst we would not wish to see such provisions applied, the reality of the UK economic situation is that the number of people employed in the public sector is reducing and, should it become necessary to reduce the number of uniformed FRS posts, FPS members would be unlikely to consider early retirement without some financial incentive.

We recognise that there is a need to provide for some enhancement to the package on offer if people are to accept voluntary early retirement. In addition to the proposed amendment, we consider that there should also be some provision to supplement pensionable service. This has been discussed at the FPC and the FBU indicated that the matter would have to be addressed through NJC channels. To our knowledge, as a member of the MMNB, we are not aware of the matter being raised in any NJC forum.

Firefighters' Pension Scheme (1992): Rule G1, Pensionable pay and average pensionable pay

In general, we have no objection to the proposal where it relates to allowances which are clearly and demonstrably of a temporary nature, such as local Additional Responsibility Allowances (ARAs).

We share CLG and other FPC members' concerns over inconsistency in fire authorities' definition of pensionable pay in respect of local allowances paid to members of the firefighters' pension schemes.

We believe that the problem has largely been created by the introduction of local 'Additional Responsibility Allowances' (ARAs) and other payments and local, rather than national, decisions about

the types of payment and their pensionable status. Matters have not been helped by the local payment of, often substantial, pensionable bonuses to principal officers.

During 2009 we suggested that the problem needs to be addressed by employers at MMNB/NJC level and we were disappointed that employer' representatives disagree with this view, continuing with their failure to acknowledge collective responsibilities in respect of pension matters. We recognise that employers are keen to increase local flexibilities but we consider that it is possible to maintain flexibility within a centrally agreed framework based on collective good practice.

Being a minority member of the MMNB we are in a position where the only method for bringing forward items for discussion at the MMNB is to obtain staff side agreement. In practice, we depend on FBU agreement to take items forward. In an effort to achieve this, we proposed the following at a June 2009 liaison meeting: -

Review the existing role maps for middle managers with a view to: -

- a. Preventing further erosion of the NJC / MMNB's role in determining FRS pay and conditions
- b. Reducing the scope for variation in fire authorities' definition of pensionable pay
- c. Examining opportunities for linkage of any revisions to the 2010 pay settlement

Progression of these items being subject to satisfactory conclusion of pay negotiations for 2009.

Sadly, the opportunity was missed.

We accept that there remains a need for clarity about which elements of pay should be regarded as pensionable. Fire and rescue authorities should have discretion on the matter but not at the national taxpayer's expense; therefore, any local determination that an allowance will be pensionable should be entirely funded by that authority.

However in relation to Paragraph 1.34, we disagree that Flexible Duty Allowance (FDA) is a temporary allowance within the definition that applies to other allowances.

When considering the status of Flexible Duty Allowance it is helpful to be aware of the background to its introduction. Prior to the mid-1980s, fire service senior officers (now middle managers) operated on what was known as a Residential Duty System for which they received a non-pensionable 25% allowance. At the behest of national employers, negotiations with trade unions were opened with a view to increasing staff availability by modifying this duty system.

During the 1980s, the Flexible Duty System was proposed which introduced positive and standby working hours rather than an 'on call' 96 hour working week. As an incentive to agree the proposed change it was agreed, through negotiation, that the additional payment would be pensionable and that the 25% additional payment would reduce to 20% in order to offset the cost to the pension scheme. At no time during negotiations was it suggested that the additional payment (Flexible Duty Allowance) should be regarded as a temporary allowance and this is why the Grey Book states that the allowance cannot be withdrawn without consent.

It seems that the history of this negotiated allowance has, unfortunately, been forgotten when formulating the current proposal to remove its accepted status as a pensionable element of core pay. FDA is not time-limited in practice, despite DCLG insistence that a contrary situation applies.

It is our understanding that FDA payments to people, already in receipt of the allowance will remain pensionable until retirement. If correct, we recognise that the proposal will have no impact upon recipients provided they remain in receipt of FDA until their retirement date. If we have misinterpreted the consultation document, we suggest that the wording is unclear and request further discussion of the proposal if it is decided to progress this part of the Amendment Order.

FDA differs little from the London Weighting Allowance which the consultation document accepts as a permanent allowance. This is true so long as the Scheme member remains employed in London which means that it could be lost but, like FDA, in practice, people transferring into a London post gain a benefit that invariably remains in place until retirement.

It will however, make a significant difference to people who are promoted to Flexible Duty System roles in the future. This represents a significant change to conditions of service given fire and rescue authorities' long-standing practical acceptance of FDA as an element of core pay and its inclusion as

pensionable pay alongside basic salary elements of pay. Yet again managers perceive that their conditions are under attack as they see yet another disincentive to advancement being proposed.

The proposal to alter the pensionable status of FDA comes on top of other disincentives such as the change to pension tax relief and the proposed introduction of tiered pension contributions. One might think that there is some central belief that the FRS does not need managers since there appears to be a concerted effort to discourage people putting themselves forward for promotion within the service. We believe that the more talented and capable people are being deterred from seeking advancement as they ask themselves whether the cumulative reduction of rewards will offset the additional stresses that accompany managerial roles. The matter of FDA pensionability is, therefore, a significant issue for the FOA.

We have found it difficult to obtain clear guidance on the methodology for calculating APBs. However, using Fire Pensions Circular 2/2008 for reference, we have produced some rough calculations which indicate that the proposed change could make a significant difference to those serving on the Flexible Duty System in the future. Since the value of an APB is dependent on indexation it is impossible to predict its final value with any certainty. However, we are convinced that the value would be less than would be obtained by continuing to regard FDA as pensionable pay.

In terms of understanding the potential impact of the proposal, it would be very helpful if DCLG could provide members of the FPC with worked examples and details of the APB benefit calculation it is intended to progress this proposal in its current form.

Firefighters' Pension Scheme (1992) Rule G3A: Exemption from payment of pension contributions – 30 years pensionable service before age 50 (Age Discrimination)

We are pleased to see that it is intended to address another long-standing issue that has been raised on numerous occasions over a period of many years.

We are concerned that a firefighter may be disadvantaged with regard to the assessment of average pensionable pay if retirement takes place after age 48 and before age 50 (e.g. for ill-health, deferred benefits, death benefits).

The revised Rule G1(3) refers to "the aggregate of pensionable pay for the year ending with the relevant date" and G1(4) says that (for all purposes other than rule C7) the relevant date is "the date of the person's last day of service in a period during which contributions were payable under G2".

If benefits become due to, or in respect of, a firefighter who had accrued 30 years at age 48 but who leaves or dies before age 50, the period for assessing average pensionable pay would be the year ending on the day before their 48th birthday and any increase in pay after reaching age 48 would be disregarded.

Conversely, if a firefighter who has received a contributions holiday between age 48 and 50, works for just one day having attained age 50 and chooses to retire, because of rule G1(5) the average pensionable pay would be the actual annual rate of pay upon that day. It is probable that many firefighters would choose to do this. This could disadvantage the FRA. Perhaps it would be more equitable all round if the relevant date for average pensionable pay were "the date of the person's last day of service in a period during which contributions were payable under G2 or an exemption allowed under Rule G3A".

Firefighters' Pension Scheme (1992) Rule H1A: Review of medical opinion (Medical Appeals)

Since this Association has previously suggested that there should be some mechanism to avoid drawn out, complicated and expensive appeals where new medical evidence becomes available, we fully support the proposed amendment.

It certainly makes sense to make provision for IQMP and Board of Medical Referees decisions to be reviewed in the light of any additional medical information that may have influenced the original decision.

Firefighters' Pension Scheme (1992) Rule H3: Appeals on other issues (non-medical issues)

The proposal is supported since the FOA believes that it is better to resolve disputes and appeals at the lowest possible level and thus avoid unnecessary effort and expense. Under the proposed arrangements it should, on most occasions, be possible to resolve appeals satisfactorily. However, there will be occasions where appeals remain unresolved after exhausting IDRPs and the services of the Pensions Ombudsman.

On such occasions, an appeal to the Crown Court will remain available as a final option. We are sure that the parties involved would prefer to avoid the use of this provision and we hope that the prospect of a Court hearing will add pressure to resolve appeals during previous stages of the process.

Firefighters' Pension Scheme (1992) Rule K4: Withdrawal of pension during service as regular firefighter (abatement)

We have some difficulty with abatement and cannot see why it should be applied since it discourages staff with skills and experience from continuing to make their services available beyond minimum retirement age. Upon reaching this age, the majority of staff are keen to obtain a return on their contributions in the form of a cash lump sum and a pension. There is no incentive to continue in service when by doing nothing one can receive half or two-thirds pre-retirement pay and supplement this by working (possibly part-time) for an organisation outside the fire and rescue service.

We recognise that abatement will generally be applied where a firefighter retires and is re-engaged in the same role and we understand that DCLG needed to issue guidance to fire and rescue authorities in line with Treasury expectations. However, from FPC discussions, we understand that the decision whether or not abatement is applied is discretionary and that Treasury guidance has no legal standing. The current position is that FRAs have the power not to abate as incentive for the retention of particular skills and knowledge but there is a cost to the pension scheme if an authority chooses not to abate.

It is acknowledged that local and national politicians are concerned about public and media perception of payments made to public servants. However, if public services are important to the nation, there is a need to attract and retain good staff. Whilst we do not seek to create a right to re-engagement we consider that where there is a justifiable argument for the retention of particular staff, more should be done to defend a decision to re-employ without abatement.

We contend that there is little cost difference between employing a retired firefighter and taking on a new employee to replace a member of staff who chooses not to seek re-employment because of abatement. In fact the cost of employing new staff is likely to be greater due to the need to pay employer pension contributions and the costs of training and development.

We doubt that this opinion will receive wide support and it is likely that abatement will be retained in which case, it is important that authorities retain some ability to create an incentive for the retention of specialist skills by being flexible with abatement. However, the cost of a decision not to abate should be borne by the fire and rescue authority to protect the national overall pension 'fund'.

Since we are conscious of the need to save money from the fire pension schemes, we are willing to accept the proposal since it is currently in place and if its retention can be used to offset scheme costs, thereby, avoiding more 'painful' alternative cost-saving measures.

Proposed Amendment to Firefighters' Pension Schemes Rule G1, Pensionable pay and average pensionable pay:

Treatment of Flexible Duty Supplement

Introduction

This paper follows on from this Association's response to the recent Department for Communities and Local Government (DCLG) consultation on proposed amendments to the Firefighters' Pension Schemes. Comments made herein are an attempt to persuade DCLG to reconsider and reverse the proposal to exclude Flexible Duty Supplement payments from definitions of pensionable pay within the 1992 and 2006 Firefighters' Pension Schemes.

Background

It is accepted that there is a need for clarity about which elements of pay should be regarded as pensionable and the Fire Officers' Association supports the view that pensionable pay should be the relevant nationally agreed pay rate for each FRS role. We also agree that allowances and emoluments of a temporary nature should not be counted as pensionable for the purposes of the 1992 and 2006 Firefighters' Pension Schemes.

Fire and rescue authorities should have discretion on the matter but not at the national taxpayer's expense; therefore, any local fire and rescue authority determination that an allowance will be pensionable should be funded by that authority.

However, we fundamentally disagree that the Flexible Duty Supplement (FDS) is a temporary allowance within the definition that applies to other allowances.

History

When considering the status of the Flexible Duty Supplement it is helpful to be aware of the background to its introduction. Prior to the mid-1980s, fire service senior officers (now middle managers) operated on what was known as a Residential Duty System for which they received a non-pensionable 25% allowance. At the behest of national employers, negotiations with trade unions were opened with a view to increasing staff availability by modifying this duty system.

During the 1980s, the Flexible Duty System was proposed which introduced positive and standby working hours rather than an 'on call' 96 hour working week. As an incentive to agree the proposed change it was agreed, through negotiation, that the additional payment would be pensionable and that the 25% additional payment would reduce to 20% in order to offset the cost to the pension scheme. At no time during negotiations was it suggested that the additional payment (Flexible Duty Supplement) should be regarded as a temporary allowance and this is why the Grey Book states that the allowance cannot be withdrawn without consent.

It seems that the history of this negotiated supplementary element of pay was forgotten when formulating the current proposal to remove its accepted status as a pensionable element of core pay. FDS is not time-limited in practice, despite DCLG insistence that a contrary situation applies.

'Grey Book' Treatment of Flexible Duty Supplement

From the wording of the Grey Book it is clear that the Flexible Duty Supplement is considered to be an element of core pay for members of the FRS who are conditioned to the Flexible Duty System.

The Grey Book, Fifth Edition, 1998 covered the Supplement, within the Section V – “Pay of Whole Time Members” as follows: -

8. Flexible duty supplement

An officer conditioned to the flexible duty system in accordance with paragraph 3(1)(b) of Section II of the Scheme is to be paid, in addition to the basic pay under Appendix I of the Scheme to which he or she is entitled by rank and service, a pensionable supplement of 20% of his or her basic pay. Safeguarding arrangements for officers in post on 31st December 1984 who at that date were conditioned to the former residential duty system are set out in paragraph 2 of Section VI.

Section V also included the following elements of pay;

- Increased pay for acting as an assistant,
- Increased pay for additional responsibilities,
- Long service payment, and
- Minimum promotion increment

The above-listed items are the only additional payments mentioned under pay of whole time members. All other supplements and allowances appear at Section VI ‘Emoluments and Allowances for Whole Time Members’.

The Fifth Edition of the Grey Book, therefore, distinguishes between other emoluments and allowances which should, rightly, not be treated as pensionable for the purposes of the 2011/12 Amendment Order.

A misunderstanding about the nature of the Flexible Duty Supplement may have arisen from revision and rationalisation of the previous version when introducing the Sixth Edition where the Supplement has been moved to the Allowances and Reimbursements section. However, in agreeing the revised 'Grey Book' there was no negotiated material change to the nature of the allowance and Section 4, Part B – “Pay” still states: -

Flexible duty system supplement

3. *An employee on the flexible duty system shall be paid a pensionable supplement of 20% of basic pay.*

Section 4, Part B also covers the following Allowances and Reimbursements: -

- Additional responsibility allowance
- Retained duty system payments
- Annual retainer
- Disturbance payment
- Payment for work activity
- Compensation for remuneration lost
- Attendance at training centres
- Employees on the day-crewing duty system who undertake retained duties
- Volunteer firefighters
- Acting up and temporary promotion
- Pre-arranged overtime
- Casual overtime
- Payment for recall to duty as a result of a serious incident

The fact that the Flexible Duty Supplement now sits with other allowances is misleading and perhaps this is the reason why some parties now consider it to be a temporary allowance rather than a pay supplement to the core pay for people employed on the Flexible Duty System.

Under normal circumstances Flexible Duty Supplement cannot be regarded as temporary since Section 4 Part A of the Grey Book (Sixth Edition) – “Hours of duty and duty systems” states:-

"Transfer onto the flexible duty system will be voluntary. In view of the pension implications, employees will not be transferred from the flexible duty system against their will, except as a result of a disciplinary reduction in role to a level where there are no posts in that fire and rescue authority on the flexible duty system."

Proposed Amendment Order

Proceeding with the proposed amendment to Rule G1 could make a significant difference to the pension benefits of people who are promoted to Flexible Duty System roles in the future. Changing the treatment of the supplement for pension purposes represents a material change to conditions of service.

Fire and rescue authorities have accepted the Flexible Duty Supplement as an element of core pay for pension purposes since its introduction

The proposal is perceived as yet another attack on managers' conditions of service on top of other disincentives such as the change to pension tax relief and the proposed introduction of tiered pension contributions.

We are concerned that the more talented and capable people will be deterred from seeking advancement as they ask themselves whether the cumulative reduction of rewards will offset the additional stresses that accompany managerial roles. The pensionable status of the Flexible Duty Supplement is, therefore, a significant issue.

Conclusion

There is a long-standing nationally negotiated agreement that the Flexible Duty Supplement forms part of core pay for roles conditioned to the Flexible Duty System.

This is reflected in the National Scheme of Conditions of Service (Grey Book) which clearly states that the Supplement should be treated as pensionable.

It is, therefore, recommended that the Flexible Duty Supplement should be specifically accommodated within the Firefighters' Pension Schemes as an element of core pay.

If the Department is not minded to accept the above recommendation, we request that this paper be tabled for discussion at the Firefighters Pension Committee meeting scheduled for 18 January 2012.