

Our Ref: MW/sll

24 September 2007

Mr P S Dhandra MP - Minister for Fire
Department for Communities and Local Government
Eland House
Bressenden Place
London
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Dear Parmjit

As you will be aware the Fire Brigades Union has a number of very significant concerns regarding a recent pensions case related to the Firefighters Pension Scheme.

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 concluded that the individuals were capable of performing *some* of the duties within the Firefighter Role Map and should not therefore receive a pension. As a result of this, LFEPA 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. They have now had their pension stopped and are now without work and without a pension. I am sure you will understand that the Union cannot accept that this is an appropriate way to treat former Firefighters. I am sure you will appreciate the level of anger which this decision has caused among FBU members.

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. For your assistance I have attached an appendix containing a chronology relating to these issues.

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.

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 are included 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 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.

I hope that this explains the concerns of the FBU in relation to this matter and I am sure that you will now appreciate the level of anger which has been created by this situation. Members who have paid a very high level of contribution (11%) to allow for the possibility of early retirement due to ill-health are now facing a future of poverty as a result of guidance issued by CLG.

I know that this was not the intention when Parliament agreed the changes to the Scheme in 2004. This matter could be resolved relatively easily by a revision of the CLG guidance and a return to the position which existed immediately following the change in 2004.

I am sure you appreciate the urgency of this situation and I would appreciate the opportunity to discuss this matter with you at the earliest opportunity.

Yours sincerely



MATT WRACK
GENERAL SECRETARY

John Healey MP
Peter Betts
Martin Hill
Terry Crossley

ILL HEALTH RETIREMENT – CHRONOLOGY OF ODPM/CLG MISREPRESENTATIONS

4 May 1999

Lockwood/McCalman Judgment in the High Court confirming that members permanently unfit for operational duties who are re-deployed to non-operational duties are thereby retired on grounds of ill health and entitled to an ill health pension (and an injury award if due to service). Based largely on the definition of 'regular firefighter' which determines those who can join and remain in the scheme.

9 May 2000

PSC(00)3 issued by Home Office to members of the Pensions Sub-Committee (PSC) and others listed. To be discussed at PSC on 4th October 2000.

The following key questions are identified:-

(i) The definition of "regular firefighter" so that it includes whole and part-time firefighters. The scope of the definition in the 1992 Pension Scheme Order was limited by the decision of the High Court in the cases of Lockwood and McCalman. It is for consideration whether any amended definition should provide for entry to the Pension Scheme only for those appointed "on terms under which he/she is for may be required to engage in firefighting" but thereafter should permit retention of the services of a firefighter on non-operational duties at the discretion of the Chief Fire Officer (ie. to restore the position to what it was assumed to be before the Lockwood/McCalman decisions). Amendment to Rule A4 may be appropriate as an alternative to amendment to the Schedule 1 definition to allow a person originally appointed on a firefighter contract but who may no longer be called upon to perform such duties.

Recommendation 19 of the report "Fit for Duty? Seeking a Healthier fire service" deals also with the need to remove the global requirement for operational fitness and substitute a role-related medical requirement.

30 June 2000

Lockwood/McCalman Judgment in the Court of Appeal refusing the appeal and upholding the High Court Judgment.

17 July 2003

ODPM issues FSC 9/2003 opening consultation on a number of amendments to the FPS including an amendment to the definition of 'regular firefighter'.

The introduction confirmed the proposals included:

A change in the definition of firefighter allowing people to remain in the pension scheme if they undertake roles other than fire fighting. At present, a firefighter must be fit to engage in fire fighting to stay in the scheme. This has been a barrier to the retention of those firefighters who are able to offer other skills to the service after an earlier career

involving fire fighting. This change will not affect a firefighter's conditions of service; the aim is not to retain people who are unfit for all operational duties. It is designed to enable an employer to continue to draw on the experience of trained firefighters, who may no longer undertake fire fighting duties and enable firefighters to stay in the scheme and receive the benefits that it offers.

The proposal was consistent with this:

Definition of "regular firefighter" - To amend the definition of "Regular Firefighter" to include: wholetime and part-time regular firefighters; and persons performing roles appropriate to their ranks, which may no longer include engaging in firefighting, so that they may continue as members of the FPS.

30 September 2003

Consultation ends

Early 2004

Fire Service Circular 14/2004. Date not specified on the circular but it is clear from the contents that it pre-dates June 2004.

This is the ODPM response to the consultation attaching a final draft and explanatory note. Consistent with the 2003 consultation, the explanatory note refers to the changes to the FPS including:

A change in the definition of firefighter allowing people to remain in the pension scheme if they undertake roles other than fire fighting. At present, a firefighter no longer engaged in full operational duties is unable to remain in the scheme.

28 July 2004

Statutory Instrument making the amendment laid before Parliament. The explanatory memorandum includes:

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

7. Policy background

7.1 Changes to the Firemen's Pension Scheme (the "FPS") are needed to meet commitments made in the White Paper "Our Fire and Rescue Service" (Cm 5808) in relation to ill-health retirement. These changes are as follows:

□ To broaden the definition of "firefighter" to allow a firefighter, who is no longer fit enough to engage in operational duties, to remain in the FPS rather than be retired with an ill-health pension. Such firefighters could be deployed on a range of other duties, including community safety. The current definition is one of the causes of the high level of ill-health retirements amongst firefighters.

7.4 All amendments have been the subject of consultation in accordance with section 26(6) of the Fire Services Act 1947. In addition, regular updates have been given to scheme members and information has been posted on the ODPM website.

8. Impact

8.2 The impact on the public sector is that it will increase the flexibility available to fire and rescue authorities to employ regular firefighters on part-time duties, and allow them to retain in service staff who, whilst not fit for operational duties, are capable of doing other appropriate work. There are potential savings in costs as the amendments will help fire and rescue services improve their management of ill-health retirements and will enable also the retention of trained and experienced staff who wish to work part-time rather than whole-time.

July/September 2004

Fire Service Circular 30/2004. Undated but the contents confirm this was issued after 28 July 2004 and before 13 September 2004. The circular includes:

The Firemen's Pension Scheme (Amendment) Order 2004 was laid before Parliament on 28th July and will come in to force on 13th September 2004. This circular provides background, details of the amendments and advice and guidance on implementation which will need to be actioned by Fire and Rescue Authorities and their human resources and pension scheme administrators .

The key changes include:

A change in the definition of firefighter allowing members who are unfit for operational firefighting duties to remain in the pension scheme if they undertake roles other than fighting fires provided there is no break in continuity of appointment. At present, a firefighter who is permanently disabled for firefighting must be retired and the Fire and Rescue Authority(FRA) have no discretion to refuse to do so. This amendment comes into effect on 13 September 2004. It is our view that this change cannot be applied to scheme members who have retired before that date (i.e. whose pensions are already vested). It should also help FRAs make any "reasonable adjustment" required by the DDA.

This amends the definition of "regular firefighter" in the Glossary of Expressions so that it can mean a whole-time or part-time member of a brigade, but would exclude a retained or volunteer member. This amendment also allows a regular firefighter who is appointed on terms under which he or she is, or may be, required to engage in firefighting to remain eligible for the FPS if disablement means that the person can no longer undertake operational duties but would still be fit, and is required, to undertake other duties of his/her role.(There is a provision that there should not be a break in continuity of appointment.)

(a) Amendment to the definition of "regular firefighter" (Schedule 1, Part 1)

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 are 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.

4 September 2006

Firefighters Pension Scheme Circular 11/2006 was issued providing:

The Firemen's Pension Scheme (Amendment) Order 2004

1. Guidance in section (a) Annex B of Fire and Rescue Service Circular 30-2004 sets out the consequence of the amendment to the definition of "regular firefighter" in Schedule 1, Part 1 (Glossary of expressions) of the Firefighters' Pension Scheme (FPS). Since the guidance was issued, the Fire and Rescue Service have responded positively to the requirement for fitness for other related duties in addition to engaging in firefighting to be considered when assessing whether a person is permanently unfit under Rule A10 and accordingly, over the last 12 months, we have revised the guidance which we have been giving to fire and rescue authorities when asked about the consequences of the amendment.

2. In the circumstances, we are amending the guidance set out in the circular and the following paragraph, which more accurately reflects the provisions of the FPS, should be substituted:-

"(a) Amendment to the definition of "regular firefighter" (Schedule 1, Part 1) 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."

This was a complete and highly significant change of position. On this basis, no member can receive an ill health or injury pension unless they are so disabled that they can do none of the duties within their role map, whether a job restricted to those duties is provided or not. Given that duties within the role maps include wholly sedentary work, such as desk duties, a seriously disabled firefighter will be denied an ill health/injury pension because he/she can undertake desk duties which are not, in fact made available. Ill health pensions, including injury awards for those injured on duty, will be very rarely available on this new test, if at all.

17 January 2007

At the Firefighters Pension Committee, DCLG are challenged on Circular 11/2006. The response of the Chairman, for DCLG was:

The Chairman said that the guidance given in circular 11/2006 clarified DCLG's view of the pension scheme. It could not be an interpretation of the Scheme. The decision of whether or not to retire a member on an ill-health pension remained with the FRA. The question of whether a member, who does not qualify for ill-health retirement, can be dismissed if no suitable job is available was an

employment matter and not for the pension schemes.

September 2007

Guidance for Independent Qualified Medical Practitioners (IQMPs) providing an opinion on permanent disability, fitness for regular work, qualifying injury and degree of disablement.

When the IQMP finds that although the firefighter is permanently disabled for operational firefighting duties but is capable of other duties within his/her role, the FRA will need to consider redeployment. Whether or not a job is available for the member is not a matter for the pension scheme and should not be taken into account by the IQMP when reaching his opinion.

*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.*

SUMMARY

It is clear that throughout the process concerning the amendment, the explanation given by ODPM was that it was to allow Fire Authorities to retain firefighters on non-operational roles as they could then remain within the Pension Scheme. If the 2006 Circular now represents the true position then, in fact, the effect of the amendment was to make it virtually impossible for any firefighter to receive an ill health or injury pension, whether the disablement is due to Fire Service duties or otherwise.

If that is the case, then ODPM did not openly explain such a highly significant change in the consultation process and subsequently. Instead they actively misled consultees (including FBU) during the consultation process as well as stakeholders after the consultation (including FBU). They also misled Parliament when laying the Statutory Instrument which amended the Scheme.