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TO: ALL MEMBERS

Dear Brother/Sister

ILL-HEALTH RETIREMENT UNDER THE FIREFIGHTERS PENSION SCHEME

A disgraceful attack on all FBU members

This circular is to draw attention to an extremely serious situation which has implications for the pension rights of all members.

In July three retired members 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.

This is an utterly disgraceful way to treat former employees of the Fire and Rescue Service and I have already made our views known to LFEPA. The Executive Council discussed the issue at a meeting this week.

Steps are already underway to challenge the decision by means of a judicial review of the decision made by LFEPA.

Implications of this case - a threat to all

The decision of the Board of Medical Referees in this case was based upon guidance provided by the Department for Communities and Local Government (CLG) in relation to ill-health retirements under the FPS.

This guidance follows changes to the Scheme which re-defined 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.

The two versions of ODPM/CLG guidance in relation to redeployment/retirement are included below. I have highlighted the important phrases.

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.

This situation now threatens all FPS members

Recent CLG advice issued to IQMP's

CLG have recently issued advice to the Independent Qualified Medical Practitioners appointed under the Scheme (FPSC 8/2007, 5 September 2007 - Appendix C). This 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.

This advice applies the same logic as the advice already issued to the Boards of Referees. However, since this is now issued to IQMP's, it will apply at the point at which retirement is considered rather than simply in cases where an appeal is made. Therefore, unless this approach is challenged, it will rapidly affect large number of members who would have previously been medically retired.

Conclusion

The situation facing these members has arisen as a result of the revision of the guidance issued by CLG and the use of this guidance by the Board of Medical Referees. We are aware that as a result of the 2004 changes in particular, and of the introduction of a stricter regime in various forms, ill-health and injury retirements have become far more rare in the past few years as some members have been redeployed to lighter duties within their Role Maps. The potential result of this change is that ill-health and injury retirements will become extremely unlikely, in fact almost impossible. Members unfit for duty will face being dismissed on grounds of capability rather than being redeployed - including members seriously injured on duty.

The Executive Council has discussed this case in the past few days and has agreed a campaign which will involve legal and political challenges to the decisions of both CLG and LFEPA. All members are urged to give urgent consideration to the issues raised and a further circular will outline the possibilities of an industrial response from the Union to this disgraceful attack on our pension rights.

Best wishes.

Yours fraternally

A handwritten signature in black ink that reads "M. Wrack". The signature is written in a cursive, slightly slanted style.

MATT WRACK
GENERAL SECRETARY