



Firefighters' Pension Scheme Circular

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| Circular Number: | FPSC 1/2010 | Date Issued: | 14 th January 2010 |
| Action: | For Information | | |
| Title: | Appeals to the Board of Medical Referees: Processing of Medical Appeals | | |
| Issued by: | Martin Hill Local Government and Firefighters' Pensions Division | | |

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| Summary: | <p>This circular covers the details of the new contract for managing Boards of Medical Referees entered by CLG with Health Management Limited; the procedures for processing appeal cases; and the revision of forms as necessary in support of this.</p> <p>This circular replaces FRSC 21/2004, which should be destroyed.</p> |
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| Addressed to: | Please Forward to: |
| The Clerk to the Fire and Rescue Authority | Pension and human resources managers |
| The Chief Fire Officer | Treasurers |
| | Finance Directors |
| | Members of the FPS, NFPS and those entitled to benefits under the FCS |

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Medical Appeals

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1. INTRODUCTION

1.1 This circular replaces Fire Service Circular 4/2003, dated 17 January 2003, and Fire and Rescue Service Circular 21/2004, dated 11 August 2004. It covers the processing of medical appeals under:

- Rule H2 of the Firemen's Pension Scheme Order 1992(FPS);
- Part 8, rule 4 of the Firefighters' Pension Scheme (England) Order 2006 (NFPS); and
- Part 6, rule 2 of the Firefighters' Compensation Scheme (England) Order 2006 (FCS).

1.2. We would like to ensure that staff in the Fire and Rescue Service in England who are responsible for handling medical appeals are aware of the requirements. The following information is particularly relevant:

2. NEW CONTRACT

2.1 CLG has contracted with Health Management Limited (HML) to provide the Boards of Medical Referees from 1st December 2009, initially for a period of 3 years.

3. FEES FOR CASES REFERRED TO HML FROM DECEMBER 2009

3.1 These are:

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| Standard fee for appeal | £6,550.00 |
| Additional Board Member | Actual cost |
| Additional medical tests required by Board | Actual cost |
| Additional copying/sorting of papers | Actual cost |
| Reduction in fee for failing to meet target date for arranging Board | £ 300.00 |
| Reduction in fee for late reports (15 working day deadline) | see table |

| Received – working days from Hearing | Reduction in fee | Fee payable on standard case |
|--|------------------|------------------------------|
| 1 – 15 | No reduction | £6,550.00 |
| 16 | £300.00 | £6,250.00 |
| 17 – 22 | £600.00 | £5,950.00 |
| 23 – 28 | £900.00 | £5,650.00 |
| 29 – 34 | £1,200.00 | £5,350.00 |
| And thereafter for each 5 working days | -£300.00 | To nil |

Please note that there will be no additional charge where the Board considers that it needs to take legal advice before issuing its report. This has been taken into consideration in setting the standard fee. If such reference will result in a delay in the issue of the report, HML will seek the agreement of CLG and there will be no reduction in the fee.

Note: The standard fee for an appeal will be £6,550.00

4. FUNCTION OF MEDICAL APPEALS

4.1 The Schemes allow for appeal to a Board of Medical Referees against a Fire & Rescue Authority's (FRA) decision on an issue of a medical nature. Such decisions may involve any of the determinations and decisions made by authorities in relation to ill health pensions and compensation awards. Authorities obtain medical opinions from Independent Qualified Medical Practitioners (IQMP) before making such decisions. The IQMP's opinion on medical matters is binding on the authority and it is this medical opinion that is open to appeal. It follows that the Board is concerned with issues which are wholly or partly of a medical nature.

4.2 The members of the Board are all medical practitioners and HML are contracted to provide Boards with the following qualifications:

Chairperson: a consultant physician who is a Fellow or Member of the Faculty of Occupational Medicine;

Second member: a consultant physician who is at least an Associate of the Faculty of Occupational Medicine; and

Third member: a consultant physician who is a specialist in the medical condition relevant to the appeal.

In some cases it maybe necessary to appoint two specialists to the Board.

4.3 The Board will be and has to remain impartial at all times and will determine the appeal on the evidence provided by each party.

5. REASONS FOR APPEAL

5.1 The Schemes require that the grounds for an appeal are stated by the appellant at the outset. The allowable reasons for an appeal include any question referred to an IQMP by the authority. These questions can be found at NFPS Part 8, Rule 2(2), FPS Part H, Rule 1(2) and FCS Part 6, Rule 1 (2).

5.2 When completing the notice of appeal the firefighter should be specific about the grounds for the appeal rather than merely stating that he/she disagrees with the opinion of the IQMP. If no grounds are given these will be pursued by CLG and may delay the consideration of the appeal.

6. MANAGEMENT OF MEDICAL APPEALS

i). Sending the appeal to CLG

6.1 From the date on which he receives from the fire and rescue authority the opinion of the IQMP, the firefighter has 14 days in the case of the FPS and the FCS, and 28 days in the case of the NFPS, to give notice of his intention to appeal, although these periods may be extended, at the discretion of the authority.

- 6.2 We have taken the opportunity presented by the change of contractor to amend the forms. These can be found on the firepensions website at:
<http://www.communities.gov.uk/fire/working/firefighterpensions/pensionsforms/>.

Note: New medical appeal forms can be found on the firepensions website

- 6.3 The medical evidence required to be provided at the same time is listed at paragraph 6.11 below, and should include the firefighter's up-to-date occupational health and GP records.
- 6.4 It is the appellant's and responding authority's responsibility to provide sufficient medical information to support their case. HML will not check the records for completeness or how up-to-date they are. However, HML will review the documents to determine whether:
- i. any other information is desirable for the purposes of the Board to determine the appeal; and
 - ii. if the Board might regard the appeal as frivolous, vexatious or manifestly ill-founded.

Note: it is the responsibility of the appellant and responding authority to ensure that the evidence on which they intend to rely is provided.

- 6.5 The forms sent to CLG include provision for the appellant to provide details of any dates that they, or their representatives, are unable to be available for a Hearing, and the Authority has a similar opportunity to state this. Dates covered should be between 2 and 6 months from the date the appeal is made. HML will normally give two months notice of the date of the hearing and has 16 weeks from the date that the papers are sent to them to arrange an appeal. While they will attempt to do so for a date that suits all parties, ultimately, it is the appellant that has to be present, with other parties sending representatives as necessary. To avoid this as far as possible, any further dates that any party becomes unavailable should be notified to HML immediately they are known.

ii) Cancellation of a medical appeal

- 6.6 The provisions of the FPS, NFPS and the FCS allow the Fire and Rescue Authority to recover costs incurred by the Boards from the appellant if the appeal is withdrawn within 21 working days of the Hearing date. HML has indicated that rather than 21 days, they will only be requiring cancellation fees for Hearings cancelled within 10 working days of the Hearing date. The rates to be charged are:

| Notice received number of working days prior to Hearing | Fees to be paid |
|---|------------------------------|
| Failure to attend, same day notice or | £6,550 (100% of fee payable) |

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| up to 2 working days notice | |
| 3 – 5 working days notice | £5,240 (80% of fee payable) |
| 6 – 10 working days notice | £3,275 (50% of fee payable) |
| More than 10 working days notice | No fee charged |

iii) Receipt of notice of appeal

- 6.7 We have made minor changes to the H2 forms to reflect the requirements of the new contract.. The forms contain key pieces of information to facilitate the medical appeals process. Failure to use the appropriate forms may result in delays in processing the case.
- 6.8 Forms can be found on the Firepensions website at:
<http://www.communities.gov.uk/fire/working/firefighterpensions/pensionsforms/>
- 6.9 When completing the notice of appeal the firefighter should be specific about the grounds for the appeal rather than merely stating that he/she disagrees with the opinion of the IQMP. The notice of appeal form can be reformatted to enable more information to be supplied or additional information can be supplied on a separate sheet. If no grounds are given, these will be pursued and may delay the consideration of the appeal.

Note: If no grounds (reasons) are given for an appeal, no arrangements for a hearing will be made until these are provided, together with supporting papers.

- 6.10 It is also important that when lodging an appeal the firefighter recognises that he/she is accepting responsibility for active participation in the process and should expect to provide supporting evidence; as well as being prepared to attend the hearing and to present his/her case for consideration.

Note: Appellants should be aware that if a Board reports that it is of the opinion that an appeal is “frivolous, vexatious or manifestly ill-founded” the fire and rescue authority may require the appellant to pay part of the cost of the appeal.

iv) Referral of papers to CLG

- 6.11 When submitting papers to CLG, it is essential that all the evidence required for the case is provided and that the papers can be readily identified. The papers required are as follows:
- i) 4 copies of the fire authority’s award decision letter;
 - ii) 4 copies of the appellant’s notice of appeal, with attached consent for release of medical records;
 - iii) 4 copies of the medical opinion with which the appellant is dissatisfied;
 - iv) 4 copies of the appeal notification form from the authority and the documents form;
 - v) 4 copies of the appellant’s complete up-to-date GP record;

- vi) 4 copies of the appellant's complete occupational record;
- vii) 4 copies of any relevant accident or incident reports; and
- viii) 4 copies of any hospital and specialist records, including any available x-rays or MRI scan films.

Care should be taken to ensure that records are up-to-date and that photocopied documents are complete and legible.

- 6.12 We have asked for medical records to be submitted in sealed envelopes with a list indicating the records inside. The list is our only means of checking that papers are complete and thus enabling referral to HML. Chasing missing and additional papers is time consuming and can cause considerable delay in the allocation of a hearing date.

Action:- Each set of papers should be collated by type (e.g. GP records; occupational health records; accident and incident reports; etc), indexed and each page numbered.

- 6.13 Any time taken or costs incurred by HML to prepare medical documents for consideration by their consultants or the Board members (including producing additional photocopies, if less than the prescribed number have been provided) will be charged as an additional cost to the Fire and Rescue Service.

v) Consent form

- 6.14 The consent form makes it clear to the appellant that they may see all the papers to be put before the Board, if they choose to do so. At the bottom of the first page there is a declaration stating whether consent is given to access medical information and whether there is a wish to see medical information before it is sent. It is important that this declaration has been completed.
- 6.15 It is important also to ensure that the appellant or his representatives are sent a copy of the medical records before the hearing, even if they have not wished to see them before submission to CLG.
- 6.16 Under the Schemes, it is the responsibility of each party to ensure that the other has any written evidence or statements upon which it intends to rely at the appeal hearing. We take the view therefore that in all cases copies of **all** the documentation from the authority should be made available to the appellant and his representatives, and vice versa. Failure to make all documents available can result in an application for Judicial Review, which can lead to the case being re-heard at the cost of the party considered responsible. It is **not** HML's responsibility under the FPS, NFPS, FCS, or contractually to provide copies of documents.

Action:- all the documentation upon which the fire and rescue authority intends to rely at a hearing should be copied to an appellant and his/her representatives, and vice versa.

vi) Agreement of question to be addressed

- 6.17. In acknowledging the submission of an appeal, CLG will note the opinion being challenged and the grounds of challenge, which will be referred to the Board for an opinion. It is important that if either party disagrees with the CLG view, they make their views known immediately. The Chairman of the Board will confirm the question at the start of the hearing and it will not be possible to change the question at that stage.

vii) Notification of date of hearing

- 6.18 You should expect to be given 2 months notice of an appeal hearing. Exceptionally an earlier date may be offered at shorter notice. In such circumstances all parties must be given time to consider whether there is sufficient time to prepare their case, etc and will be asked for their agreement **in writing**. Once the date has been accepted, postponement/adjournment will not be granted other than in circumstances outlined below.

viii) Submission of late evidence

- 6.19 As set out in the relevant Scheme Schedule, evidence will not normally be accepted less than 7 days (28 days in the case of the NFPS) before the date of the hearing. Whilst there is discretion to accept written statements or evidence after this date, this is only likely to be acceptable when it had not been possible to obtain the papers earlier. Evidence that had or could have been made available within the time laid down will not be accepted.
- 6.20 The Board has the discretion both to accept late evidence in exceptional circumstances and also to adjourn a hearing where the submission of late evidence has, in the opinion of the Board, put one or other party at a disadvantage. Such circumstances may arise when one party has not had the opportunity to consider new evidence from the other party in advance of the hearing. The Board has the discretion to award costs in such circumstances.

ix) Postponement/adjournment

- 6.21 Postponements in advance of the hearing will only be granted with the authority of CLG and in the limited circumstances set out below i.e.
- **in respect of the appellant's illness (which will require a doctor's statement)**
 - **attendance at a Court hearing**
 - **bereavement (and then only of a close relative).**

The Chair has limited discretion to adjourn a case on the day of the hearing. Costs incurred will be sought from the party requesting postponement or adjournment.

x) Venues

- 6.22 The main venues will be in London, Manchester and Glasgow. The use of any others would have to be justified by the individual medical circumstances of the appellant and by agreement with the authority.

xi) Legal Representation at hearings

- 6.23 Legal representation should not normally be necessary at an appeal hearing, which is a medical hearing enquiring into medical issues. The Board will expect fairness of representation for both parties. Neither party should expect a case to be adjourned because of the failure of a legal representative to attend as arranged or, if attending, not to be fully briefed.

xii) Non - attendance at hearings

- 6.24 The Schemes allow a hearing to proceed if the appellant fails to attend. Consequently, while it is desirable for both parties to be represented, if one or other is absent the hearing may go ahead at the Board's discretion and the appeal may be determined on such information as is already available, as allowed by the Schemes.

xiii) Additional costs

- 6.25 On occasions there may be a need for the Board to consider additional X rays /scans or to ask for further tests to be carried out. Where this is considered essential to the consideration of the case, the fire and rescue authority will be expected to meet the additional costs and will be invoiced accordingly.

xiv) Evaluation Forms

- 6.26 CLG issue evaluation forms to appellants as part of the contract management process. They are used to inform our discussions at our quarterly meetings with HML.
- 6.27 Separate to this, HML will collect their own feedback from the parties on the day of the hearing.

xv) Note to appellants

- 6.28 In order to ensure that appellants are aware of what is required, CLG will send the "note to appellants" at Annex E to each appellant on receipt of their appeal from the fire and rescue authority. This will be issued with the introductory letter acknowledging receipt of the documents, giving the case reference and asking the appellant to confirm the CLG assessment of the question(s) to be addressed by the Board.

7. MEDICAL APPEAL OR IDR?P?

- 7.1 Where the firefighter is challenging non-medical issues, the case should be considered under IDR?P procedures (see FPSC 1/2009).

8. KEY LEARNINGS

- 8.1 HML has agreed to identify points in the course of processing an appeal that might have implications for other brigades. Examples will be publicised as necessary.

9. Opinion of Independent Qualified Medical Practitioner

- 9.1 In response to requests from authorities, we have prepared a pro-forma for obtaining the written opinion of an IQMP. This can be found on the firepensions website together with the forms referred to in paragraph 6.2 above.



Martin Hill

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