



The Fire Brigades Union

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To: ALL MEMBERS

Dear Brother/Sister,

“DAY CREW PLUS” DUTY SYSTEMS

Members will be aware that over a number of years fire and rescue services have brought forward proposals to introduce a “*day crew plus*” duty system (DCP). Fire and rescue services are known to have called the duty system by another name, for example in South Yorkshire the FRS calls it “Close Proximity Crewing” (CPC).

Such proposals are not motivated by improving fire cover or service delivery in the fire service area but instead merely to make cuts in the workforce.

What is Wrong With DPC?

The FBU opposes its introduction for key reasons, including:-

- It is a means to cut jobs in the present and into the future.
- It is a means to undermine national bargaining for agreed pay rates. With its introduction, the hourly rate for a competent firefighter will be slashed and the principle of overtime being paid at premium rate for hours over and above 42 hours would be eradicated.
- It is a means to undermine the agreed Grey Book 42 hour working week, (and hourly rate of pay).

“Day Crew Plus” (DCP) Duty Systems And Pensions

Since the matter was last discussed at FBU Conference in 2012, confirmation has been provided on the future funding of public sector pension schemes, not least in section 12 of the Public Services Pensions Act 2013.

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“Day Crew Plus” (DCP) Duty Systems And Pensions/Cont....

It clarifies that the effect of the introduction of a significant increase in the pensionable pay of a much-reduced number of employees who pay pension contributions will be that the pension liabilities rise in a two-fold manner. This rise in pension liabilities will be picked up in the three yearly revaluations of the firefighters' pension schemes and will have a significant impact on the costs of the scheme.

Local FRSs which are keen to introduce DCP duty systems, and government departments which are equally keen to see the fire service slashed, are liable to downplay the impact. Members will be mindful that a principal feature of the 2015 pension scheme for firefighters is the principal of the “employer’s cap” which quite simply means that the increased costs of the scheme **are borne by the employees**.

The introduction of DPC duty systems will result in a legacy of employee contribution rates for firefighters which will be even higher than the already exorbitant rates that you currently pay.

Firefighter Safety And Public Safety

The above reasons are significant enough, however, there are even more fundamental reasons for the FBU not agreeing to DCP and kindred duty systems:-

- Health and safety; and
- Public protection.

The working time regulations were written to ensure that any permissible variation from the norms cited within the regulations are properly considered, and any such variation must be subject to the agreement of the trade union to ensure that the health and safety of workers are protected.

It was recognised that trade unions would take into account the nature of the work undertaken by the workers, the inherent risks involved, and accordingly, would be able to best judge the suitability of work patterns.

Health, Safety and Protecting Members

No firefighter expects to be seriously injured or killed at work. Sadly, it is too often the case that our members die whilst on duty.

Firefighter fatality can befall any member whilst on duty and does not discriminate. We have lost members young and old, wholtime and retained. Fatalities are not just confined to firefighters; we have also lost members in higher roles.

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Health, Safety And Protecting Members/Cont....

There are a host of contributory factors which can result in a firefighter fatality. One of the key factors in worker-deaths is fatigue. Every firefighter would recognise that sleep quality and duration is worse whilst at work than at home.

This has been recognised by the courts and employment tribunals both within the UK and at European level.

When negotiating and agreeing duty systems in a service which provides a 24/7 fire cover, both parties, the trade union side and the employer side, must find the correct balance on a number of issues including family life and adequate rest.

The importance of quality and duration of sleep should not be underestimated. It can affect performance whilst at work and can also affect mental health (stress, anxiety and well-being). Its importance has been highlighted in a recent report commissioned by CFA called *“Enhancing the Health, Fitness and Performance of UK Firefighters : An Interim Report”*.

Poor quality sleep can adversely affect decision-making and stamina. It can affect the operational performance of firefighters on the incident ground; both of those directly attacking the incident and those responsible for command and control.

The 2-2-4 average 42-hour duty system has provided the right balance for a number of years now, meeting both the needs of the fire and rescue service and firefighters whilst providing safe working conditions for firefighters.

In too many different ways and on too many occasions we have witnessed an appalling attitude by fire and rescue services when incidents go wrong. Members will be mindful that members and their families have endured terrible treatment including:-

- Middle and junior officers were subject to a criminal manslaughter prosecution in connection with the firefighter fatalities in Atherstone on Stour
- East Sussex Fire Authority, or as we are told, the Authority's insurers resisted accepting responsibility for the firefighter fatalities (and firefighter injuries) that resulted from the fire and explosion at Marlie Farm
- In respect of Marlie Farm, the Fire Authority argued that one of the firefighters who died had contributed to his own death

It gives the Fire Brigades Union no satisfaction to state that the treatment of our members or survivor-families is not a good one. It would be a foolhardy person who would be confident that a fire and rescue service (or their insurer?) would not seek to either apportion blame and/or to avoid responsibility using any and all arguments that come to hand. Such arguments could so easily include a defence against litigation from families that the deceased (or injured) member who has voluntarily offered to work exceptionally long hours has knowingly contributed to any injury (fatal or otherwise) that befalls them.

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Health, Safety And Protecting Members/Cont....

HR, along with operational managers, will attempt to encourage you to agree to working long hours, but when things go wrong, fire and rescue service management will wield any argument at their disposal. When such tragedies occur is not the time to discover the truth in the maxim, “HR is not your friend”.

Public Safety

DPC and kindred duty systems adversely affect public safety. Reliance on fatigued crews aside, there are other inherent risks.

There has been much talk of an increase in the role of the fire and rescue service. The FBU is very much at the centre of that debate. We believe in protecting the future of the service and public safety.

Slashing jobs runs counter to professionalism and high standards of service delivery. To cite one example, the government wishes firefighters to carry out roles at incidents of marauding terrorism to assist in the extraction of large numbers of casualties which are likely at such incidents. The FBU is committed to working to achieve the safest systems of work which would allow us to be able to agree to this extension of the firefighter’s role subject also to successful discussions on the issue of reward.

However, the government has identified that alongside professionalism, standards of competence and total commitment to public safety, the fire service is best placed to perform this role because the service can provide the required large numbers of “boots that can be put quickly on the ground” to do the job. The cuts in the numbers of firefighters who are on-duty and also off-duty and available for recall is jeopardised by the uncontrolled cuts to the fire service and is exacerbated by CPC schemes which decimates the number of off-duty personnel available for recall in the event of a national emergency.

Negotiations In Your Fire and Rescue Service

The FBU recognizes that a fire and rescue service has a right to make proposals. In turn, the FBU has every right to challenge or resist any proposals. However, before a disagreement is reached, both sides will discuss the proposals to measure whether the proposals have merit. Changes to duty systems **are negotiable and not consultative** because they concern contractual working arrangements. Negotiable matters require the agreement of both parties before change can be introduced.

Moreover, working patterns must conform to the Working Time Regulations which were first introduced in 1998 following the ratification of the European Working Time Directive, which is a health and safety directive. Whilst those regulations have been subject to periodic changes, they remain largely unchanged since they were first introduced.

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Negotiations in Your Fire and Rescue Service/Cont....

The discussions in your fire and rescue service are ongoing and there is nothing inevitable about the proposals being introduced. In the event of there being no agreement, your officials can dispute the proposed change.

They can do so in a number of ways including:-

- Referral to the NJC Technical Advisory Panel (often referred to as “the TAP” or “the Tap”)
- Making representations to the enforcement authority in respect of the Working Time Regulations (which in respect of the fire and rescue service is the Health and Safety Executive).

Technical Advisory Panel

The terms of reference for the TAP can be found in Section 4 Part A of the Grey Book. Where there is a difference of opinion between a fire and rescue service and an FBU brigade committee over proposals to introduce a duty system that differs to the duty system which existed prior to 2004, (and which also still exists with the relevant fire service) a referral can be made to the TAP. Any referral can be made unilaterally i.e. it only requires one party to refer an item for it to be considered by the Panel, whether the other party agrees or not.

However, before deciding to proceed to the TAP unilaterally, it is courteous and good practice for the party wishing to have the matter referred, to write to the other party to provide an opportunity for the matter to be the subject of a joint referral.

A referral to the TAP is made when discussion and negotiations locally have been exhausted. Paragraph 4 of the relevant section in the Grey Book sets out the process where an FRS and the FBU disagree. It states:-

4. *Where, following discussion, there is no agreement between the fire and rescue authority and recognised trade union over a proposed duty system (and it does not accord with the principles of any of the existing national duty systems at paragraphs 7 to 16 below) the difference can be referred by either party to the NJC’s Technical Advisory Panel. The Panel will be chaired by an Independent Expert (appointed on a three-yearly basis by the NJC), who will be assisted by the Joint Secretaries.*

The key element of the consideration made by the TAP is detailed in the Grey book:-

3. *Duty systems will need to meet the requirements of the fire and rescue authority’s Integrated Risk Management Plan. Any proposed system should be discussed with the recognised trade unions and be based on the following principles:*

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Technical Advisory Panel/Cont....

- (1) *Basic working hours should average forty-two per week (inclusive of three hours of meal breaks in every twenty-four hours) for full-time employees. Hours of duty should be pro-rata for part-time employees.*
- (2) *There should be at least two periods of twenty-four hours free from duty each week.*
- (3) *It should comply with relevant United Kingdom and European law, including the Working Time Regulations 1998, and Health, Safety and Welfare at Work legislation.*
- (4) *It should have regard to the special circumstances of individual employees and be family friendly.*

As you will see from the above, compliance with the Working Time Regulations is a requirement.

Health And Safety Executive (HSE)

Not all the provisions in the Working Time Regulations are enforceable by the HSE. Some matters need to be the subject of complaint to the Employment Tribunal.

Those which are enforceable by the HSE are the key elements of the working time regulations a number of which are abrogated by “day crew plus” duty systems.

Non-compliance With The Working Time Regulations (WTRs) and “Day Crew Plus” - Is It Just The Union’s Interpretation?

As stated above, day crew plus is a title applied to a particular kind of working pattern that was put together by officers within the fire and rescue service some time ago and has been peddled in various different guises by different fire and rescue services.

Neither the FBU nor our solicitors, Thompsons, are in any doubt that such duty systems are outside the WTRs. There is no ambiguity about the matter. We are not alone in this view. For example, during the course of the ongoing disagreement in South Yorkshire between the FRS and the FBU, principal management wrote quite candidly in May 2014 to confirm:

SYFR acknowledges that any CPC type system, is non-compliant with:-

- a) *The four principles detailed in Section 4, Part A, Paragraph 3 of the Grey Book; and that*
- b) *The system does not comply with the Working Time Regulations*

Moreover, the FBU is in receipt of Queen’s Counsel opinion on the matter from Michael Ford, a pre-eminent lawyer.

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The Requirements Of The Working Time Regulations

The UK Working Time Regulations derive from the European Directive on working time. The Directive (and thereby the regulations) is founded upon protecting the health and safety of workers.

The working time regulations are often misquoted and misunderstood. Below is a brief outline of two key points:-

Work at night-time, of more than 8 hours that takes place during a defined period which is collectively agreed, must include the hours midnight - 5 am (or where there is no collectively agreed defined period - the default period is 11pm - 6am).	Because the CPC schemes involve working for four consecutive 24 hour periods, the 8 hour principle is breached. <u>An employer MUST have a collective agreement</u> to introduce it whether the workers are a. Volunteers or not b. Whether they are FBU members or not
Varying the entitlement to 11 hours DAILY REST in each 24 hour period	Because the CPC schemes involve working for four consecutive 24 hour periods, the 11hrs/24 period is breached. <u>An employer MUST have a collective agreement</u> to introduce it whether the workers are a. Volunteers or not b. Whether they are FBU members or not

The existing duty systems, (i.e. those detailed in Section 4 Part A) are the subject of a collective agreement, and are therefore compliant with the WTRs.

In The Event Of There Being No Collective Agreement On DPC In This FRS, Where Does That Leave DPC?

Paragraph 6 and 7 of Section 4, Part A of the Grey Book states clearly:-

6. The following duty systems shall continue to operate until replaced or supplemented locally by new systems under the terms of paragraphs 3 to 5 above.

Shift duty system

7. The hours of duty of full-time employees on this system shall be an average of forty-two per week. The hours of duty of part-time employees shall be pro-rata.

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In The Event Of There Being No Collective Agreement On DPC In This FRS, Where Does That Leave DPC?/Cont....

The rota will be based on the following principles:

- (1) Each period of twenty-four hours shall be divided into a day shift and a night shift.*
- (2) The night shift shall not be less than twelve hours.*
- (3) There shall be at least two complete periods of twenty-four hours free from duty each week.*
- (4) Leave days shall change week by week in a regular progressive manner.*
- (5) No rota system shall include continuous duty periods of twenty-four hours.*
- (6) Three hours shall be specified for meal breaks in every twenty-four hours.*

The timing of these periods is at the discretion of the authority. Account shall be taken of meal breaks interrupted by emergency calls.

[The section also lists and describes the Day crewing duty system (para 8); Day duty system (para 9); Flexible duty system (paras 10-15) and the Retained duty system (paras 16 and 17)].

This is categorically not the case. Moreover, it imperils any member who signs the contract as he/she would effectively be signing an individual contract with all the vulnerabilities that comes with it.

Pay

FBU officials at all levels of the union understand the attractions that a DCP system can hold for some members. In a period where pay rises have been hovering in the 0 - 1% range for quite some time, it comes as no surprise that some members have been tempted by the DCP system.

Grey Book employees already work extremely long hours. If employers wish members to work more than 42 hours then there is a price for this, and that price is the reasonable expectation that the Grey Book overtime rate will be paid.

But beyond this, that some members will work additional hours to increase their household income has an adverse effect on the union's prospects for success in pay negotiations with the national employers in the short, medium and long term.

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FBU Local Negotiators

Summary

This circular expands on the reasons for the FBU policy of opposition to duty systems such as “day crew plus” or “close proximity crewing”, agreed at FBU Conference in 2012. It is important that members abide by our policy. It is imperative that members do not:-

- Jeopardise national and local negotiation.
- Undermine national bargaining and the Grey Book.
- Undermine national pay bargaining.
- Undermine your national and local officials.
- Place themselves in an exposed position in the event of serious injury to themselves or co-workers, or worse still, in the event of an incident ground firefighter fatality.

What Should Members Do?

- Support your local FBU officials in implementing FBU policy.
- Do not submit “expressions of interest” if your FRS asks you if you wish to do so.

Protect the service; protect your safety; protect yourself and protect your colleagues.

Best wishes.

Yours fraternally



ANDY DARK
Assistant General Secretary

AD/jh