



DEFEND CONTROL JOBS
AN INJURY TO ONE IS AN INJURY TO ALL

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TO: ALL RETAINED BRANCHES
Cc: Brigade Secretaries

Dear Brother/Sister,

RETAINED FIREFIGHTERS: PENSION SETTLEMENT UPDATE

FBU officials and representatives of Thompsons Solicitors have been in negotiations with representatives of the Department of Communities and Local Government (CLG) trying to reach a negotiated settlement that could be recommended to members as a settlement to the issue of firefighters working the Retained Duty System gaining access to the Firefighters' Pension Scheme.

A report was given to the Executive Council at their meeting held on 21st and 22nd April 2010 and a full discussion took place on the negotiations to date.

Regular reports have been given to the Executive Council and further meetings have taken place with representatives of the Department of Communities and Local Government (CLG). This circular highlights the areas of discussion, the outcome of the negotiation where agreement was reached and outlines the next stages of this process.

It is important to reiterate that the issues highlighted only refer to an individual who elects to become a member of the modified NFPS. It is also very important to understand the term modified NFPS. In essence an RDS members who benefits from the settlement will not actually become members of the FPS: they will have the option of becoming a member of the NFPS or to become members of the modified NFPS. Members who elect to join the modified NFPS will join a scheme that follows the design of the NFPS but the modification is to have benefits that are equivalent to FPS terms (this is referred to as the modified NFPS throughout this circular). In other words the NFPS is the vehicle for providing the pension benefits but the benefits themselves follow the FPS

Agreement has been reached on the following issues.

1. Application to join the modified NFPS

The remedy outlined will be available to ALL retained firefighters with service between 1 July 2000 and 5 April 2006, regardless of whether they have lodged a claim with an ET.

The FBU raised the issue re the case of an eligible person who died whilst in service on or before 5 April 2006. CLG suggested that the estate could be entitled to death grant of 2x pensionable pay and that no contributions would be payable. Following further negotiations it was agreed that any payment in respect of any person who had died in

service in this period should reflect the potential value of a spouse's death in service pension benefits: as the amounts would be small, it was agreed that the arrangement should be as simple as possible. Payment of a lump sum rather than a pension (similar to the arrangements for trivial commutation) is preferred.

The agreed position was that the FBU would reflect on the suitability of a figure between 2 and 3x pensionable pay and provide this to CLG. An actuarial advisor to the FBU (First Actuarial) has advised that a lump sum between 2.5 x and 3 x pensionable pay would be fair value, provided that the deceased member's estate did not have to pay the unpaid pension contributions.

2. Benefit Structure

(i) Retirement age

Following extensive negotiations on the issue of which retirement age should be applicable to the modified NFPS it was agreed that the normal pensionable age of 55 will apply, although in line with the Firefighters' Pension Scheme (FPS) members may retire from age 50+ with 25 years' (qualifying) service.

CLG defended their position that a firefighter should not be entitled to reckon RDS qualifying service prior to July 2000, and therefore should not be able to claim pension at age 50 on the basis of taking into account RDS service prior to July 2000.

The FBU took extensive legal advice on this position and reported that the FBU could not challenge this position under the terms of the Employment Tribunal and advised that only service since 2000 can count for these purposes.

(ii) Accrual

The FBU were successful in achieving an accrual rate in the modified NFPS of $1.333/60^{\text{th}}$ [1/45]. This is equivalent to the accrual rate for a member of the FPS who accrues a 2/3rds pension after 30 years' service ($30/45^{\text{ths}} = 2/3^{\text{rds}}$).

(iii) Transfers in of pension benefits

- An active member will be entitled to transfer in the value of another pension, if the person has not already had an opportunity to transfer in such service following the options exercise in 2007.
- If a person has retired from the fire and rescue service, there will be no entitlement to transfer in service from another pension scheme.
- In the case of a person who has died before the settlement is implemented, there will no option for the estate to seek a transfer in.

(iv) Switching

Members who could have joined in 2006 and who did not do so will be given the option to be treated as if they did join.

Members who joined the NFPS in 2006 will be allowed to pay the additional contributions for this period and have it credited as service in the modified NFPS.

Service between 1 July 2000 and 5th April 2006 inclusive may be purchased as if on FPS terms and then “transferred” to the ordinary NFPS on the same terms as were available in 2006/7 to members of the FPS opting to join the NFPS.

Service from 6 April 2006 to the point of the settlement options exercise may be purchased on the ordinary NFPS on standard terms (i.e. on a 1/60th for 1/60th basis). The transfer of 2000-6 service would be done once the historic contributions have been paid. If, subsequently, the member does not complete the contribution payments then the service credit will be down rated.

(v) Aggregation

It was recognised that there were a number of situations in which a firefighter might have changed duty systems without any break in service since 1 July 2000 and would be affected:

- (a) Retained firefighter on or before 5th April 2006 who transferred to whole-time regular duties on or before 5th April 2006 and would already be a member of the FPS 1992. It was agreed that they will be allowed to aggregate the retained service with the regular service in the FPS 1992 - they will remain members of the FPS and will not become members of the NFPS on standard or modified terms;
- (b) Retained firefighter on or before 5th April 2006 who transferred to whole-time regular duties after 5th April 2006. It was agreed that the person should have the option to be in the modified NFPS for all his/her service.

The FBU have raised a concern where an individual had two contracts simultaneously with either the same or a different employer and gave the following examples

- 1) If a member
 - (i) is a retained firefighter before April 2006 and then
 - (ii) (ii) became a whole-time firefighter after April 2006 with the same or a different FRA, their service will be treated as continuous.

Their service will all be pensionable in the modified NFPS.

- 2) However If they
 - (i) were a retained firefighter before April 2006 and then
 - (ii) (ii) became a whole-time firefighter after April 2006 with a different FRA but kept their original retained contract (i.e. they became whole-time retained)

the two contracts would be considered separately. Their second whole-time contract will be pensionable in the ordinary NFPS.

- 3) If they
 - (i) are a retained firefighter and then
 - (ii) become whole-time retained with the same FRA
 then the original retained contract will be treated as continuous and their whole-time contract will be treated as pensionable in the ordinary NFPS.

The FBU felt that these people could be disadvantaged and that it would need to be looked at in more detail. In the third case outlined above (whole-time retained with the same FRA) there is a potential unfairness if the firefighter was pressurised into keeping their retained contract as a condition of being offered a whole-time contract.

Thompson's solicitors have worked with the FBU and have provided a guide for firefighters to follow to ensure that an individual is aware of a process to ensure that an individual is not disadvantaged in the way identified. This advice is being checked and will be sent to RDS members in the near future.

3. Pensionable Service

The current formula in Part 10 Rule 6(5) of the NFPS will be applied. In this instance pay is used as an approximation to derive what the member's pensionable service should be and the formula used is:

$A/B \times 365$ where

A = Actual pensionable pay received in that year

B = Reference pay for that year

4. Pensionable Pay

There is currently a larger discussion taking place on what elements of pay are pensionable is currently under discussion at the Firefighters' Pension Committee and the outcome will reflect the position to be adopted for all pension schemes.

5. Preserved Pension

The FBU successfully negotiated that there would be instances whereby an individual may be eligible for a preserved pension as they had worked in the period 2000-06. This is the situation where an individual may have taken up and left employment in this period. An individual in this situation would be treated as a deferred pensioner and the benefit would be calculated in accordance with Part 3, rule 3(3), i.e. the pensionable service that the person would have received as a whole-time firefighter is calculated and then pro-rated.

6. Reduced Service Credit

A person must elect to pay contributions for all past service (i.e. from 1 July 2000 or joining the service, if later, through to the settlement options exercise including the balance of any additional contributions from 6 April 2006 to cover the difference between ordinary and modified membership of the NFPS). There will be no option to pay contributions for part of past service but elect not to pay for another part.

However if the person is paying backdated contributions by instalments and then stops paying, he/she will be credited only with the relevant proportion in accordance with Part 11, rule 7 of the NFPS.

7. Commutation

CLG proposed that the commutation rates for the modified NFPS should be fixed at 12: 1 in line with the NFPS but after strong representations by the FBU It was agreed that this would be calculated by reference to the same scale that applies in the FPS.

8. Injury Benefits

CLG took the position that the J4 award [Part 8, rule 2 of the FCS] be revoked and that retained firefighters appointed on or before 5 April 2006 be entitled to pro-rated awards

on the same basis as those appointed on or after 6 April 2006. Those already in receipt of injury benefits on the basis of whole-time regular equivalence would be unaffected by the removal of protection. After taking legal advice the FBU agreed the current Rule J4 could not be defended at the Employment Tribunal but reserved the right to raise this issue in any other forum as appropriate. This was communicated separately to CLG following additional legal advice.

9. Backdated Contributions and Interest

The FBU negotiated a position whereby an individual will be afforded the option of a payment period of 10 years, or the period to normal pension age (55), whichever is the shorter to pay any backdated contributions due. Periodic contributions would be paid through payroll, where possible, and that means the person concerned will get tax credit in the normal way.

Where tax would not be recoverable by the individual, purchase of historic or past service by lump sum would reflect the fact. In case of periodic payments, if the contributions cannot be paid through payroll, individuals would be expected to recover tax from HMRC in the usual way.

Interest will be calculated on a fixed rate over the relevant period to be agreed in a similar manner to a previously used formula known as 'Preston'. The Government Actuary's Department will provide a proposal to be presented to the FBU.

10. Bounty

There is no effect on the bounty from these negotiations.

11. State second pension

Any issues around a second state pension will be resolved between CLG and HMRC.

12. Group Personal Pensions

Where an individual has made an agreement on a GPP it was suggested that this is not a matter for CLG or any part of the settlement of the claim.

Next Steps

The Executive Council considered the negotiated position and recommended that this remedy is accepted by FBU members. The FBU have written to the Employment Tribunal and requested that a further stay of proceedings is made to allow members to make a decision on the recommended position.

Subject to the agreement of members a blueprint of how this modified NFPS will look will need to be developed. CLG are currently working on this and will forward this to the FBU for consideration.

Ivan Walker (Thompsons) is liaising with representatives of GAD to arrive at a workable process for arriving at interest liabilities.

It is important to understand the timeframe involved. Once all the issues including the FBU concerns are agreed CLG will have to consult with other interested parties, under the usual consultation regime.

The FBU will communicate the proposal to members to get their agreement in a similar way that the conditions of service issues were dealt with.

It will then be necessary to get the relevant Statutory Instrument through Parliament but if all parties are agreed that should be a formality.

It is difficult to put an exact time on completion as much of this is subject to Parliamentary process as well as the wider consultation. Executive Council members, officials and members will be given regular updates as they become available.

Yours fraternally,

A handwritten signature in black ink, appearing to read 'M. Wrack', written in a cursive style.

MATT WRACK
General Secretary

SS/EMH