

Firefighters' Pension Schemes 1992, 2006 and 2015

Guidance Notes for Independent Qualified Medical Practitioner providing a medical opinion in the case of a Scheme member claiming early payment of a deferred pension on grounds of permanent disablement

These notes are based on extracts from Guidance Notes¹ issued by the Department for Communities and Local Government ("DCLG"), now Home Office, which were designed to help Independent Qualified Medical Practitioners ("IQMPs"²) understand their role when providing a medical opinion to a Fire and Rescue Authority ("FRA"). The original Guidance Notes concentrate on the case of a firefighter retiring from the fire and rescue service as an active member of the Firefighters' Pension Scheme and who may become entitled to an ill-health pension; they do not cover the case of a person who has already left the Firefighters' Pension Scheme with entitlement to a deferred pension and who has requested early payment of that deferred pension on health grounds. These notes set out the general principles of guidance for IQMPs but are tailored to the requirements for early payment of a deferred pension.

The IQMP's role

The Pension Scheme Regulations specify the questions which the FRA must refer to the IQMP for an opinion. The decision to make an award can only be taken by the FRA; it should not be taken by the IQMP, although the FRA will be bound by the opinion of the IQMP on medical issues.

Since the FRA must refer a case to the IQMP in terms of a specific question or questions, the IQMP must frame his or her report in terms of answering the question or questions that have been put.

The procedures followed during the assessment must be capable of being justified and the IQMP must be confident about the role which he/she is performing. If there is any doubt about any procedural issue the IQMP should contact the FRA before proceeding further. IQMPs are under an obligation to ensure that they are competent in performing the IQMP role and have the necessary knowledge and skills to perform this role.

The IQMP will need to be aware of any relevant case law. The Human Resources Department of the Fire and Rescue Service will be able to provide this. Although medical evidence may indicate entitlement to an award under the Pension Scheme this cannot be recommended where a legal precedent prevents this. Whilst this would not affect the medical decision it will have consequences for the pension status. In some cases, the IQMP will need a clear understanding of the job that the deferred member performed in the Fire and Rescue Service; the FRA will provide details in these cases and, if the IQMP is not confident that he/she understands them, he/she should clarify any points of doubt before proceeding further.

¹ 4th Edition Dated October 2012 - <http://www.fpsboard.org/images/PDF/Bulletin4/Appendix2.pdf>

² "Independent qualified medical practitioner" means a medical practitioner holding a diploma in occupational medicine or an equivalent or higher qualification issued by a competent authority in an EEA State, or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State; and for the purposes of this definition "a competent authority" has the meaning given by section 55(1) of the Medical Act 1983

All the medical evidence should be considered, including any GP records, occupational health notes, consultants' reports etc., and any relevant submissions made by the member or on his/her behalf. The IQMP would not necessarily be expected to examine the member before reaching an opinion.

Meaning of "permanent disablement" as qualification for early payment of a deferred pension under the Firefighters' Pension Schemes

Firefighters' Pension Scheme 1992 ("FPS 1992")³

"A deferred pension becomes payable from the 60th birthday of the person entitled to it, or from any earlier date on which he becomes permanently disabled for engaging in firefighting or performing any other duties appropriate to his former role as a firefighter."

Regulation [B5(4)]

"Disablement means incapacity, occasioned by infirmity of mind or body, for the performance of duty." Regulation [A10(2)]

"References in this Scheme to a person's being permanently disabled are references to his being disabled at the time when the question arises for decision and to his disablement being at that time likely to be permanent." Regulation [A10(1)]

"In determining whether a disablement is permanent, a fire and rescue authority shall have regard to whether the disablement will continue until the person's normal pension age."⁴

Regulation [A10(1A)]

Firefighters' Pension Scheme 2006 ("FPS 2006")⁵

"Where the authority are satisfied . . . that the person is permanently disabled from undertaking regular employment, the authority shall pay the deferred pension . . ." [Part 3, Paragraph 3, Sub Paragraph 4b]

"Regular employment means employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person's capacity for employment arises." [Part 1, Paragraph 2]

"In determining whether a person's disablement is permanent, the authority shall have regard in every case to whether the disablement will continue until the person's normal retirement age⁶; and in relation to a person who has taken a deferred pension, to whether the disablement will continue until his normal benefit age."⁷ [Part 1, Paragraph 3, Sub Paragraph 3]

³ <http://www.fpsregs.org/index.php/regulations/fps-1992-regulations>

⁴ In FPS 1992, "Normal pension age" is age 55 [A13]

⁵ <http://www.fpsregs.org/index.php/regulations/fps-2006-regulations>

⁶ In FPS 2006, "Normal retirement age" is 60 for those who are not special retained firefighter members. For special retained firefighter members it is age 55. The normal retirement age for connected members is 60, for connected special members it is 55. The FRA will indicate on the certificate the relevant age for a particular case. [Part 2, Paragraph 3]

⁷ In FPS 2006, "Normal benefit age" is 65 for those who are not special retained firefighter members. For special retained firefighter members and special deferred members it is age 60. [Part 2, paragraph 3]

Firefighters' Pension Scheme 2015 ("FPS 2015")⁸

"A deferred member who has not reached deferred pension age⁹ is entitled to immediate payment of a retirement pension . . . if . . . in the opinion of the IQMP the member is incapable of undertaking regular employment because of infirmity of mind and body and this incapacity will continue until deferred pension age; and the scheme manager has determined that the member is entitled to the early payment of the retirement pension."

[Rule 67]

The issues to be decided by the IQMP

There is a slight difference between the Schemes in respect of the issues to be addressed by the IQMP. In the 1992 scheme the person must be deemed unfit to carry out the engagements of a firefighter or for performing other duties appropriate to their former role as a firefighter. Whereas in the 2006 & 2015 scheme the firefighter must be unfit for any regular employment.

The certificate submitted by the FRA to the IQMP for completion will invite the IQMP to address the relevant issues for that Scheme. Brief guidance notes relating to the certificate will also be provided by the FRA. Each certificate will include a section for additional comment from the IQMP if felt appropriate.

If consideration must be given to fitness for the person's (former) role in the Fire and Rescue Service, account should be taken of the details of the duties of the role as supplied by the FRA.

When considering an individual's fitness for any regular employment under the 2006 or 2015 scheme, all employments inside and outside of the Fire and Rescue Authority must be considered. The definition of "regular employment" contained in all three Schemes is employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the question of disablement arises.

The decision regarding an individual's fitness for their (former) role and any regular employment should be made within the context of medical reports, information provided by the individual, and the observations of the Authority's Medical Adviser and the IQMP.

In certain cases, the FRA may provide, or it may be necessary for the FRA or IQMP to obtain, information from a treating specialist. It is recommended that any approach to a specialist should be on the basis of specific questions, as answers to these are likely to be more useful than a general report in enabling the medical adviser to make a balanced and objective occupational health assessment. Questions seeking confirmation of diagnosis and prognosis **are** appropriate. It is important that the specialist should not be asked simply to give an opinion on medical fitness for work in the Fire and Rescue Service or eligibility to access pension benefits under the Firefighters' Pension Schemes as this will often be outside their area of expertise. The FRA would be expected to bear the cost of any such referrals

⁸ <http://www.fpsregs.org/index.php/regulations/fps-2015-regulations>

⁹ In FPS 2015, "deferred pension age" is a person's State pension age or age 65 if that is higher

To assist the IQMP, the FRA's request for a medical opinion may attach the Authority's Medical Adviser's opinion on the issue of permanent disablement, and a background report which will include all relevant medical details and a history of the case. The report will take account of the assessments of the member's GP and hospital specialist(s) as appropriate, and may be supplemented with relevant records, reports, X-rays or scans.

The aim of the assessment is not to ascertain whether a person can carry out their job or regular employment on a "one-off" basis, but rather to assess the person's ability to carry out the activity with reasonable ease and reliability **at the time of the consideration**.

In considering each case attention should be given to:

- how the condition might change over time, due to any fluctuations in the medical condition, and how this affects the member's functional ability;
- how pain might limit functional ability;
- the ability to repeat functional activities;
- the ability to perform activities safely, without substantial risk of harm to self or others;
- the possible effects of bio-psychological issues.

For conditions which vary from day to day, a reasonable approach would be to choose the level of capability which applies for the majority of the days, with the proviso that the claimed level of capability on "good" and "bad" days is likely to be consistent with the clinical picture presented, the diagnosis and the overall pattern of activity in everyday life. If a person cannot repeat an activity with a reasonable degree of regularity – and certainly if they can perform the activity only once – then they should be considered unable to perform that activity.

The IQMP's opinion is used by the FRA to decide if the deferred pension should be paid early. The opinion of the IQMP is binding on the Authority. It is not permissible under the Scheme rules for a FRA to seek a second opinion from another IQMP.

Right of appeal

The member has the right of appeal against the opinion of the IQMP to a Board of Medical Referees appointed by the Secretary of State. The decision of the Board is then binding on the FRA.

There is no avenue of appeal for the FRA against the opinion of the IQMP.

Reviews

A case can be reviewed if the member presents new evidence to the FRA within 28 days of being given a copy of the medical opinion and both the member and the FRA agree that the IQMP who produced the opinion upon which the FRA's decision as to award is based should be given the opportunity to review his/her opinion.

Also, the FRA must keep early payment of a deferred award under review and must periodically check the medical status of the recipient to determine if he/she is still eligible to receive it. A further opinion from an IQMP would be sought for the review.