

Meeting of the Board 10 December 2020

Ill-health update - Medical Retirements

Background

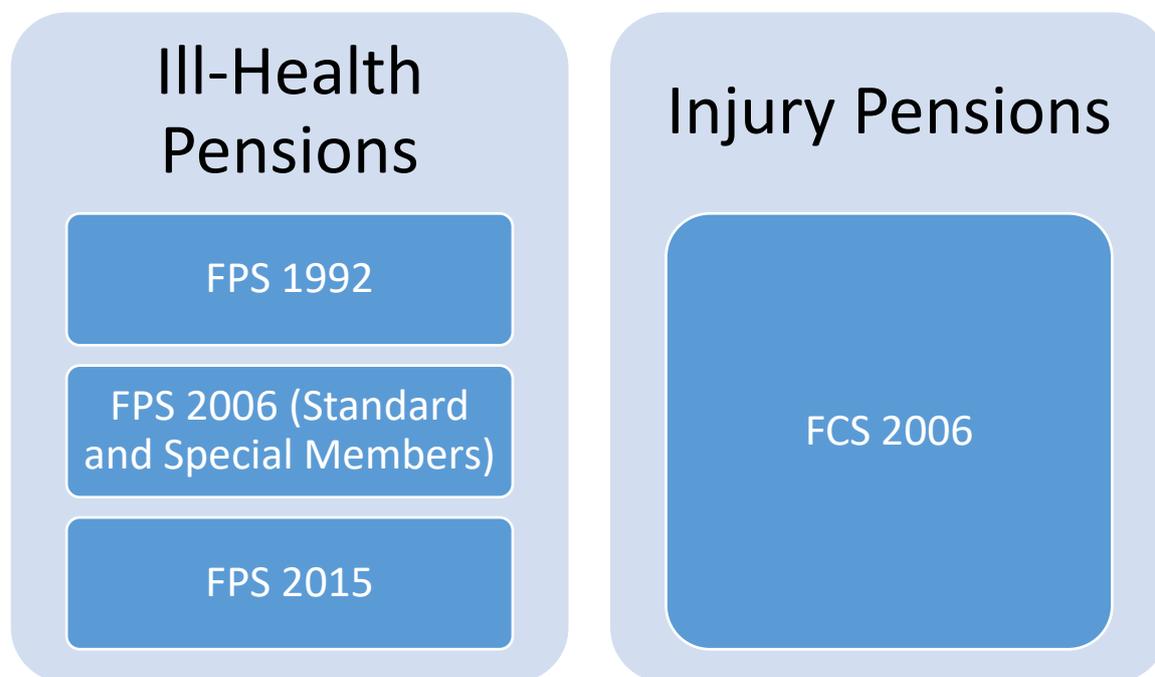
1. This paper follows on from [Paper 1 - ill-health retirement](#) provided to the Board to consider at their meeting dated 13 June 2019, which was discussed under [item 7](#).
2. Which Independent Qualified Medical Practitioner (IQMP) certificate to use is not laid down in legislation and there is no requirement to use a particular form (albeit it is agreed that guidance is advisable), subsequently it is for Fire and Rescue Authorities (FRAs) to satisfy themselves that the forms meet the requirements of the legislation and case law and that the IQMP has answered the relevant questions.
3. The SAB agreed that the current forms as per the website would be kept as fit for purpose for the time being, but a review group would be formed to consider agreeing revised ill-health guidance and forms and a programme of work to upskill FRAs on the ill-health process and completing the forms. As per the [paper to the board in June 2020](#), it was subsequently agreed that work would be postponed awaiting more details on remedy and post remedy.
4. Nevertheless, it appears that knowledge of the medical retirement provisions among stakeholders is not as strong as it could be, leading to the wrong questions being answered by the IQMP and it would appear that injury and ill-health are often confused leading to the pension scheme regulations being quoted when referring to compensation scheme issues and vice versa.
5. This paper recommends to the Board that despite the workload of remedy and Matthews, it appears appropriate that work commences on this ill-health review project as soon as possible.

Medical Retirements

6. Medical retirement means retirement from active status on ill-health grounds, early payment of a deferred pension due to poor health, and an injury pension payable where the member has a qualifying injury.
7. Eligibility for and the calculation of medical retirement benefits are laid out in the scheme regulations. How these are calculated and the criteria for eligibility will depend on which scheme the member is in.
8. A [quick guide to Ill-health and Injury Benefits](#) is available under the 'Bite-Size' drop down menu of the 'Administration Resources' tab of www.fpsregs.org.

9. Ill-health pensions are paid under the regulations of the pension schemes, while injury benefits are paid under the provisions of the compensation scheme. These are often confused, and regulations mis-quoted.

10. Figure 1: Medical Retirement Provisions



Firefighters Compensation Scheme 2006 (FCS 2006)

11. An injury pension is paid under the regulations of the Firefighters Compensation Scheme 2006 (FCS 2006)¹. The amount of benefit payable does not depend on what pension scheme the member may be in, however, it will be calculated in reference to the service attributable to the employment for which the injury is received.

12. Benefits paid from the compensation scheme are funded entirely by the FRA and not from the notional pension account funded by employer and employee contributions and the government top-up grant.

13. In order to qualify for an injury pension a person must have been permanently disabled if the infirmity was occasioned by a qualifying injury.²

¹ <http://www.fpsregs.org/index.php/regulations/firefighters-compensation-scheme>

² Part 2, Rule 1 - <https://www.legislation.gov.uk/ukxi/2006/1811/schedule/1/made>

14. A qualifying injury is referenced as “an injury received by a person, without his own default, in the exercise of his duties as a regular firefighter.”³

Ill-Health Pensions

15. Eligibility and the pension payable will depend on which pension scheme the member is in at the time of retirement.

16. Ill-health retirements are included in the government top-up grant, however FRAs are required to make a payment of two times pensionable pay for lower tier ill-health and four times pensionable pay for higher tier ill-health into the notional fund.

17. In each of the schemes there are two tiers of ill-health retirement, these are lower tier and higher tier.

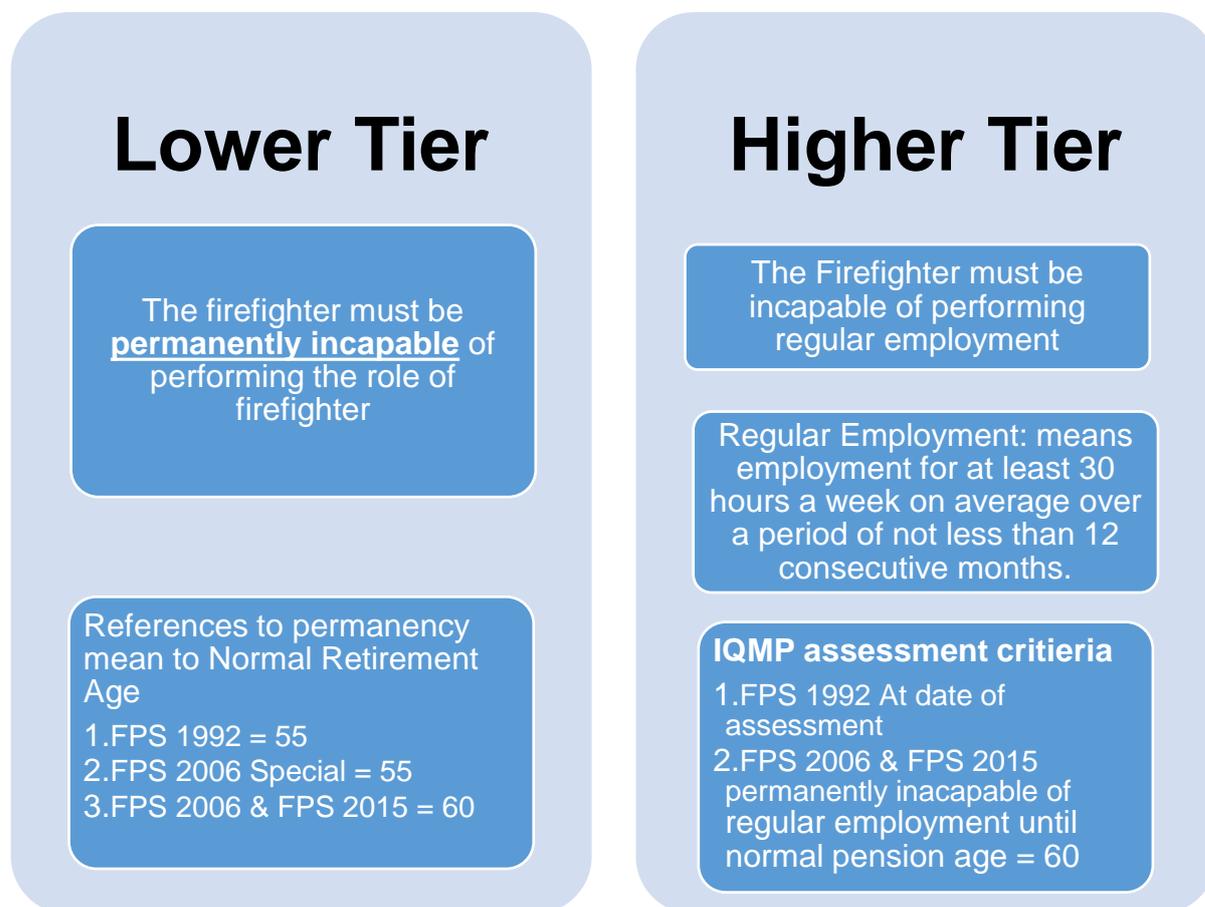
18. The eligibility to these tiers of ill-health are different between the FPS 1992, and FPS 2006 and FPS 2015

18.1. For lower tier ill-health they are based on capability to normal pension age which is different between the schemes.

18.2. For higher tier, the FPS 1992 only requires the IQMP to assess at the date of entitlement, for the FPS 2006 and FPS 2015 the IQMP must judge the likeliness of permanent incapability to normal pension age

³ Part 1, Rule 7 - <https://www.legislation.gov.uk/ukxi/2006/1811/schedule/1/made>

19. Figure 2: Eligibility for Lower and Higher Tier



Common problems

20. The lack of knowledge and available guidance means that decisions on the pension and compensation schemes are often challenged, often due to misunderstanding.

21. The common reasons for these are commented on below.

Immediate Detriment

22. Immediate detriment members are those who are retiring from the scheme and would, following the court decisions in Sargeant be entitled to their pension benefit paid under their legacy final salary scheme if it is better for them to do so.

23. There are decisions for FRAs to make over whether they have the powers to pay benefits under the final salary schemes, nevertheless there are steps the FRA can and should take now to lessen the administrative impact and any additional stress on the member at a later date.

24. This is to ensure, where it is appropriate, that the IQMP makes an assessment under both schemes at the time the question of entitlement arises.
25. Ill-health pensions are paid under what is known as single source, this means that it is the rules that are in force at the time of ill-health retirement that are relevant in determining access to benefits.
26. A member who has been moved into FPS 2015 from either the FPS 1992 or FPS 2006 would be considered for ill-health under the rules of the 2015 scheme only [[Part 5, Chapter 4](#)]. However, following the age discrimination case the member will be entitled to choose to have benefits paid from their legacy scheme.
27. That can mean there is a higher bar for entitlement to pension under FPS 2015 than in FPS 1992, hence the need for two assessments under the eligibility for each scheme
28. [FPS Bulletin 28 - January 2020](#) contained an instruction to FRAs to take immediate action for any new ill-health retirements, and this instruction was repeated in the [information note for FRAs on immediate detriment](#).
29. Despite these instructions, these assessments are not always taking place or there is some confusion on when it is necessary.

IQMP Assessments

30. Some IQMPs have felt unable to make two assessments under the scheme, due to wording in the scheme regulations that state the IQMP should not previously have been involved in a case for which his/her opinion has been requested, and they feel that whether the IQMP can express an opinion on both schemes simultaneously is unclear.
31. Having discussed these concerns with Medigold a primary supplier of IQMPs, LGA has given a view that the regulation wording should not prevent IQMPs from giving an opinion on both schemes, citing the example that this is currently the position for injury and ill-health retirements or deferred pension ill-health retirements, where the IQMP assesses the member under both the compensation scheme and pension scheme, or from both pension schemes for a deferred members retirement.
32. We discussed these concerns with Medigold raising that that this approach could lead to inconsistency on the opinion of a member's health by two different IQMPs. For example, we have already been informed of a situation where an IQMP has given an opinion on FPS 1992 and within the report commented that they would have found the member eligible for ill-health under FPS 2015.

33. As a result of that correspondence, Medigold have accepted that it is not possible to provide definitive guidance on the regulations as this amounts to interpretation of the regulations. They would instead be prepared to accept a statement from the SAB that to provide two opinions on both schemes is permissible.

Action

34. **For the board to agree making a statement on the ability of an IQMP to assess under both legacy and reformed schemes**

35. The table below illustrates when and why an assessment under both schemes might be necessary for an immediate detriment case.

36. Table 1: IQMP assessment under both schemes

	FPS 1992	FPS 2006 & 2015	Why you might need an assessment under both schemes
Lower Tier	Permanently incapable being a Firefighter until normal pension age (55)	Permanently incapable of being a Firefighter until normal pension age (60)	<p>The difference in normal retirement ages, might affect the IQMPs opinion of permanently incapable.</p> <p>That means that someone might not qualify under FPS 2015 but would under FPS 1992 because they might be capable of being a firefighter by age 60 but not by age 55.</p> <p>If someone does not qualify under FPS 2015, they should be re-assessed under FPS 1992.</p> <p>However, if they qualify under FPS 2015, there is no need to re-assess under FPS 1992 as they will automatically qualify.</p>
Higher Tier	Incapable of regular employment	Permanently incapable of regular employment until normal pension age (60)	<p>The requirement for permanency under FPS 2006 & FPS 2015 means that someone might not qualify under FPS 2015 but <i>would</i> qualify under FPS 1992.</p> <p>If someone does not qualify under FPS 2015, they should be re-assessed under FPS 1992.</p> <p>However, if they qualify under FPS 2015, there is no need to re-</p>

			assess under FPS 1992 as they will automatically qualify.
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- 37. Someone who qualifies under FPS 2015 for higher tier *might* receive a better ill-health enhanced pension under FPS 2015 than the FPS 1992 as the higher tier enhancement is calculated based on the period to normal pension age which is 5 years longer than FPS 1992.
- 38. In addition, a five-year pension guarantee is paid under the FPS 2015, which means if the firefighter dies within five years of retirement the estate receives a balance payment up to five years' worth of pension.
- 39. There is sometimes an automatic assumption that the FPS 1992 is the better scheme and it is important that members are quoted benefits under both schemes so they can understand the value of their pension benefits to themselves and their family.

Certificates and Guidance

- 40. As stated, which IQMP certificate to use is not laid down in legislation, nevertheless in 2009, following meetings of an ill-health review group, a form was developed that brought together the requirement to consider redeployment as a result of the Marrion case, and the different rules and eligibility for FPS 1992, FPS 2006, and FCS 2006.
- 41. In 2015, following feedback that the forms were unwieldy to use and had led to errors of interpretation the forms were simplified and separated across the schemes, which included a new form for FPS 2015.
- 42. However, the new forms considered the questions for IQMPs only and did not cover the requirement for re-deployment by removing the section for section reasonable adjustment / suitable employment.

SECTION D: REASONABLE ADJUSTMENT/SUITABLE REDEPLOYMENT

The Fire and Rescue Authority have considered the following reasonable adjustments and/or suitable redeployments: *(Authority to set out action that has been considered and why reasonable adjustment/redeployment is not possible)*

.....

.....

.....

The Authority is satisfied that reasonable adjustment or redeployment is not applicable/available

Signed:; Position:

Print name:

43. The new forms ask the IQMP to confirm that they have considered the FRAs report on reasonable adjustments / redeployment, but this is not as explicit as the old form.

(tick relevant boxes)

- the duties appropriate to the role of the firefighter
- the medical history held on fire and rescue authority records
- the medical history held by the firefighter's general practitioner
- the fire and rescue authority's report regarding reasonable adjustments and/or suitable redeployments
- the DCLG Guidance Notes for IQMPs
- report(s) / additional information:

IQMP opinion on incapacity being 'likely to' continue to NPA

44. In order to award an ill-health pension, the FRA must request an IQMP to determine the nature of disability and its likelihood of continuing to NPA.
45. Under the FPS 2015, the IQMP must consider rules 65⁴ and 152⁵ with regards to the incapacity lasting until NPA. Under rule 65 (1a & 2a) the condition to be met for ill-health is where incapacity **will** continue to normal pension age. Rule 152 says that the scheme manager must request an IQMP to provide an opinion on whether the incapacity is **likely to** continue to normal pension age.
46. The term 'likely to' is less definitive than 'will'. 'Will' implies that there should be no doubt, whereas 'likely to' allows for some discretion of opinion.
47. The forms were amended⁶ in May 2019 to reflect the terminology of the 2015 regulations asking the IQMP to assess based on 'likely to'.

Single forms vs Individual forms

48. The SAB previously considered the question of whether a single form as designed in 2009 was better than individual forms.
49. The SAB legal adviser confirmed that separate forms were less likely to lead to mistakes reflecting a misunderstanding of the schemes.
50. The SAB secretariat has since been told by Medigold that separate forms would reduce the potential for misunderstanding.

⁴ <http://www.legislation.gov.uk/uksi/2014/2848/regulation/65/made>

⁵ <http://www.legislation.gov.uk/uksi/2014/2848/regulation/152/made>

⁶ Tracked version of form showing change - <http://www.fpsregs.org/images/Illhealth/FPS2015/FPS2015A-tracked-210519.doc>

The separation of ill health awards and injury awards in the 2006 scheme and subsequently is not always reflected in the forms the IQMP is asked to complete. The impression is sometimes given that they are all one scheme. I have encountered situations where the questions on the form don't align to the questions in the regulations. Having two sets of forms (one for applications from active members and one for applications from deferred members) for each of the 1992, 2006 and 2015 schemes and a separate form for the compensation scheme would, I think, reduce the potential for misunderstanding.

Guidance available to IQMPs and FRAs

51. The [guidance available to IQMPs](#) on medical assessments is dated October 2012, no further guidance has been issued.
52. There is no guidance available to FRAs on the processes and decision making that should be in place.

FRAs acceptance of IQMP opinion

53. The regulations state that the IQMPs opinion is binding on the FRA, nevertheless that does not mean that the FRAs should accept an opinion blindly.
54. We reported in [FPS Bulletin 13](#) and [FPS Bulletin14](#) on the responsibility of the decision maker (the FRA) to not act blindly in accepting a medical opinion, and to ensure the IQMP reaches their opinion in a proper manner. Various case law was cited in the bulletins. Therefore, with regards to fulfilling this duty we recommend that FRAs should:
 - 54.1. Ask for reassurance that any judgment made by the IQMP on the capacity of the person to undertake regular employment to normal pension age, has been made bearing in mind [regulation 152](#) and the wording 'likely to', rather than will.
 - 54.2. Ask the IQMP to state any reasons given if they feel the member would not be 'likely to' be incapacitated until normal pension age, so they can ensure the decision was reached in a proper manner considering all evidence.

Recommended action

55. The review group should be put in place as quickly as possible commencing in January 2021 with representatives from IQMPs, FRAs, and SAB members, in order to review the forms used and guidance issued.
56. The current ill-health forms should be reviewed for best practice and adopted by the SAB.

57. For the Board to agree making a statement on the ability of an IQMP to assess under both legacy and reformed schemes

Board Secretariat

December 2020