

# LEICESTERSHIRE

## FIRE and RESCUE SERVICE

Status of Report: Public Agenda Item: 20

Meeting: Combined Fire Authority  
Date: 10<sup>th</sup> December 2014  
Subject: Firefighter Fitness Standards and Assessment Consultation – Proposed Response  
Report By: The Chief Fire and Rescue Officer  
Author: Adam Stretton (Head of Finance and Occupational Health)  
For: Decision

### 1. Purpose

The purpose of this report is to seek approval to the proposed response on behalf of the Combined Fire Authority (CFA) to the Department for Local Government and Communities' (DCLG's) consultation on firefighter fitness standards and assessment issues.

### 2. Executive Summary

As part of the on-going industrial relations dispute between the Fire Brigades Union (FBU) and the government the Minister for Fire, Penny Mordaunt MP, wrote to all firefighters and Fire and Rescue Authorities (FRAs) on the 28<sup>th</sup> October 2014 and outlined that a national consultation on a set of fitness principles would be undertaken. The proposals in the consultation will look to place updated fitness principles into a revised Fire and Rescue National Framework for England. The consultation document was forwarded to FRAs on the 28<sup>th</sup> October 2014 with a formal response deadline, to DCLG of the 9<sup>th</sup> December 2014. DCLG have been informed that our submission will be made on the 10<sup>th</sup> December 2014 in order to allow the CFA to formally consider their response.

### 3. Report Detail

- 3.1 A consultation on Firefighters Fitness Standards and Assessment was referred to in a letter to all firefighters by Penny Mordaunt MP on the 28<sup>th</sup> October 2014 and formally forwarded by DCLG on the same date. The consultation sets out a number of fitness principles that are proposed to be incorporated into the statutory Fire and Rescue National Framework for England. This will require FRAs to put in place local fitness policies and procedures to support firefighters to maintain their fitness. If a firefighter loses their fitness through no fault of their own it will also require the FRA to consider initiating the process for an unreduced pension. The letter dated the 28<sup>th</sup> October 2014 to all firefighters from the Minister is attached as **Appendix 1** and the Consultation document is attached as **Appendix 2**.

- 3.2 It is recognised that for some, maintaining fitness enabling them to work until their Normal Pension Age and beyond may be challenging, in particular for women firefighters. Retaining women firefighters in the organisation is vital and they, and others, need reassurances that support and operational roles will be available to them as they age. Further work will be undertaken through the fitness working group, chaired by Peter Holland, the Chief Fire and Rescue Adviser (CFRA), to underpin the key principles with practical advice. The Government will review the operation of local fitness policies and processes to ensure that they are being properly implemented.
- 3.3 A previous consultation on fitness and capability was forwarded by the CFRA on the 1<sup>st</sup> November 2013. The consultation set out to agree 11 key principles on fitness and capability across the Fire and Rescue Service in England with the aim to provide the foundation upon which a fitness assessment policy and associated processes can be based. The CFA responded to this consultation through the Urgent Action Procedure on the 26<sup>th</sup> November 2013. The responses made to this consultation have been reiterated in the proposed consultation response at **Appendix 3**.
- 3.4 It is noted that the proposed response suggests that the CFA agrees with Proposed Change 1 as these principles are already built into the existing Occupational Health and Fitness Employee Health and Well Being Policy.
- 3.5 However, the proposed response suggests that the CFA cannot agree in totality with Proposed Change 2.
- 3.6 In Proposed Change 2 it needs to be noted that the CFA retains its right in employment law that after appropriate due consideration it can dismiss an employee on capability grounds. The current Occupational Health Employee Health and Well Being Policy provides support and development to any operational member of staff to reach or retain fitness levels. If this is not reached after a determined time, then performance and capability procedures are actioned.
- 3.7 The proposed change also states that where an individual after receiving support and development cannot permanently regain the necessary levels of fitness and there are no opportunities for reasonable adjustment or redeployment within role that a Fire Authority **will** consider the Authority initiated early retirement process. Firstly, any proposal to effectively fetter the Authority's discretion on any early retirement is not considered legally possible. Secondly, it would place the CFA at financial risk as the number and cost of any early retirements are not quantifiable. Thirdly, it is noted that the current retirement policy does not allow for any CFA initiated early retirement, except on the grounds of efficiency i.e. there is no discretion afforded to the CFA although the scheme does offer an ability to apply discretion.

#### **4. Report Implications / Impact**

##### **4.1 *Legal (including crime and disorder)***

These are included in the report.

#### 4.2 ***Financial (including value for money, benefits and efficiencies)***

These are included in the report.

#### 4.3 ***Risk (including corporate and operational, health and safety and any impact on the continuity of service delivery)***

Operational resilience will be negatively impacted if operational roles are required to be found for personnel who do not meet the minimum fitness standard levels.

#### 4.4 ***Staff, Service Users and Stakeholders (including the Equality Impact Assessment)***

The fitness of employees is a matter of paramount importance. It is vitally important that firefighters take responsibility for their own fitness. As a good employer, the CFA will provide support and development for all employees to maintain fitness standards.

#### 4.5 ***Environmental***

None.

#### 4.6 ***Impact upon Our Plan Objectives***

None.

### 5. **Recommendations**

The CFA is asked to approve the draft consultation response.

### 6. **Background Papers**

Fitness and Capability Consultation Response (Urgent Action Procedure – 26<sup>th</sup> November 2013).

### 7. **Appendices**

1. Letter from Penny Mordaunt MP to all firefighters dated 28<sup>th</sup> October 2014
2. Consultation document on Firefighter Fitness Standards and Assessment
3. Proposed Consultation Response



Department for  
Communities and  
Local Government

**Penny Mordaunt MP**  
*Parliamentary Under Secretary of State*

***Department for Communities and Local  
Government***

4th Floor, Fry Building  
2 Marsham Street  
London SW1P 4DF  
E-Mail: penny.mordaunt@communities.gsi.gov.uk

[www.gov.uk/dclg](http://www.gov.uk/dclg)

28/10/2014

Dear Firefighter,

### **Reforms to Firefighters' Pension Scheme**

I have this morning issued a Written Ministerial Statement to update the House of Commons on the pension reforms and laid the pension regulations in Parliament.

I have been clear all along that my goal is to deliver the best deal possible for firefighters. As a new, incoming Fire Minister I have wanted to satisfy myself that the reformed pension scheme is both fair and sustainable and to have worked through your concerns myself. Pensions are complex, and the issues that have been raised by all parties have been considered methodically. Until recently it has not proved possible to give a final outline of the pension scheme, I can now set these out for you.

**I am pleased to be able to confirm that we will proceed with the enhanced early retirement terms for those who retire from age 55, not just from age 57.** What this means in practice is that a member of the 2015 scheme who retires at age 55 would see a reduction of around 21.8% to their pension. In comparison, the same member would see a reduction of over 40.5% to their pension if taken at age 55 in the 2006 scheme. The same early retirement terms will apply to the Firefighters' Pension Scheme 2015 as will apply to the reformed police pension scheme. To have had a lower reduction at age 55 would have been at the expense of those who wished to work longer. We need to balance the ability to draw a pension earlier, with the fair reward for those who work longer.

**I can confirm that the accrual rate (i.e. the rate at which you build up your pension) will also be at a faster rate than the 2006 scheme and calculated on a career average arrangement. This means that you build up your pension quicker, and this is fairer to lower paid firefighters.**

I considered, extensively, the alternative early retirement arrangements which the Fire Brigades Union were requesting but in the end rejected them for the following reasons. It is true that the Union's preferred arrangement was better for existing members of the 1992 scheme who transfer to the 2015 scheme, but it meant that 2006 scheme members and new joiners would pay for it by earning less pension per year. Existing 2006 scheme members would have seen much larger reductions to their existing pension if they retired before age 60 and therefore were less likely to take advantage of the early retirement terms. These members would have been faced with having to work longer to get the same pension under the Unions' requested early retirement terms.

I know one area of concern of firefighters is what would happen if they cannot continue as a firefighter due to a permanent medical condition. This was an important consideration and a **firefighter who suffers ill-health will receive a larger ill-health pension under the final**

**scheme than the Fire Brigades Union's preferred scheme.** The scheme which we put in place should be for the benefit of all firefighters, not just the few. There is a balance to be made between early retirement terms and the rate at which pension is built up. I am convinced that the final position reflects the best balance across the workforce, particularly those who may retire on ill-health grounds.

I wanted to update you on the fitness regulation which had been proposed by the Fire Brigades Union. I agree that providing such assurances were important, however it became quite clear that I do not have the legislative power to impose terms of employment on fire and rescue authorities through the pension regulations. This could be possible if the scheme only included one employer but in England there are 46 separate employers. Importantly a person who leaves on the grounds of fitness will already have been considered for an ill-health pension, and a medical advisor will have determined that there is no permanent physiological or mental reason preventing the firefighter undertaking their role. Where there is a permanent medical reason then they will be ill-health retired with an unreduced pension. I further concluded that a regulation in the event of loss of fitness would not guarantee an unreduced pension, as the employer is still required to determine whether a firefighter meets the criteria for the payment of a pension. There is, however, another way to do this.

I decided a more practical, proportionate and fairer approach is to set out a series of principles for supporting firefighters in their day to day work as they get older. **I have today issued a consultation on putting these fitness principles into the statutory Fire and Rescue National Framework for England. This will require fire and rescue authorities to put in place local fitness policies and procedures to support firefighters to maintain their fitness. If a firefighter loses their fitness through no fault of their own, it will also require the authority to consider initiating the process for an unreduced pension.** This delivers the same effect as the regulation as an authority will need to demonstrate that it has fairly considered whether an individual should receive an unreduced pension.

Furthermore, the principles in the National Framework ensure that firefighters will be supported through their careers to maintain their fitness, enabling them to work until their Normal Pension Age and beyond if they so wish. For some this may be challenging, in particular for women firefighters. Retaining women firefighters in the service is vital and they, and others, need both the reassurances that support and operational roles will be available to them as they age in the service. Further work will be undertaken through the fitness working group, chaired by Peter Holland, the Chief Fire and Rescue Adviser to underpin these high level principles with practical advice. We will review the operation of the local fitness policies and processes to ensure that they are being properly implemented.

**I have also reduced the cost to authorities of early retiring firefighters on an unreduced pension, making it a more cost effective option should they wish to do this.**

**One other benefit of the scheme is that you can take partial retirement (sometimes known as flexible retirement). You can, when you reach 55, continue to work and draw your pension at the same time.** This is an attractive option for those who do not want to work full-time, but seek to remain in some employment for financial or other reasons. During your period of partial retirement you can continue to earn more pension, for the period when you choose to fully retire.

As promised, I have reviewed the position of firefighters who transferred pension from the Armed Forces Pension Scheme into the firefighters' pension schemes. Fire and rescue authorities overwhelmingly agreed that these members were not being disproportionately affected by the introduction of the 2015 Scheme. Any transferred in pension will absolutely continue to count towards the pension a member can take under the 1992 scheme rules. Further details can be found in my letter of today's date on Armed Forces transfers.

Finally, I wanted to explain where I got to on the transitional protections. **I have considered the protections adopted for firefighters against the Government's wider policy on transitional protections for the pension reforms. I am content that the protections adopted fully comply with Government policy** by using a scheme's Normal Pension Age as the reference point, even where individuals can retire earlier than the Normal Pension Age. I can also confirm that a greater proportion of firefighters are protected than any other large public service pension scheme. **Those of you who do transfer to the 2015 scheme will see a reduction in your employee contribution rate of 2 percentage points in 2015-16.**

I know that although you may be against the principle of the reforms, the majority of you understand the reasons for them. You understand that it is not sustainable for a firefighter retiring at age 50 today to draw a pension for 37 years in retirement after a career of 30 years. The numbers simply do not add up.

Over the three years of discussions there have been many changes to the terms of the pension scheme design, and the Government has given a guarantee that no more changes will be necessary for 25 years simply because we are now addressing the longevity and final salary risks in this new scheme design. Firefighters will also be able to sit on local pension boards, taking a direct interest in how their pension is run locally.

I know that some of you are considering your membership of the scheme and, whilst the Department cannot give financial advice, you should be aware that pensions are widely considered to be the best way of saving for your retirement. However, we do recognise that individuals will have complex personal scenarios and we are exploring the common issues with the Service, with the intention of providing further guidance shortly for those seeking further information.

I am convinced that the final scheme design provides the best, balanced deal for all firefighters. The regulations have been signed by two Treasury commissioners and myself, have now been laid in Parliament, and will become the law.

I commend this reformed scheme to you. It is a good and sustainable scheme, which will enable you to continue to benefit from a fair pension when you reach the end of your fire and rescue service career.

The Government has made substantial changes to the pension scheme since discussions began in 2011 to arrive at the best deal available for firefighters. The final substantial change is the proposal to put the fitness arrangements on a statutory footing. I am resolved that there is no further gains to be made and I am therefore laying the regulations today.

A handwritten signature in grey ink, appearing to read 'PM Mordaunt', is centered on the page.

**PENNY MORDAUNT MP**



Department for  
Communities and  
Local Government

# Firefighter Fitness Standards and Assessment

Consultation on amendment to the fire and rescue national  
framework



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Department for Communities and Local Government  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF  
Telephone: 030 3444 0000

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# Firefighter Fitness Standards and Assessment: consultation

Last year the Department consulted on a set of fitness principles which at that time were considered to provide the possible basis of dealing with fitness and capability issues, which had emerged during the previous months. After that consultation closed, a series of discussions have taken place with key stakeholders regarding how fitness and capability are measured in the fire and rescue service, the ability of firefighters to maintain a reasonable and safe standard, the appropriate methods by which firefighters' fitness can be measured and monitored, along with possible legislative changes which would help support that. In addition, the Department for Communities and Local Government is also in the process of setting in train a joint working group on fitness issues chaired by the Chief Fire and Rescue Adviser.

The Department remains committed to ensuring that fitness standards and assessments are transparent and fair, that all firefighters who have difficulties in maintaining fitness are fully supported, and that those who are unable to maintain fitness are treated sympathetically in looking for redeployment, alternative employment, or in the event of them having to leave the service. The Department believes that the Fire and Rescue National Framework for England provides the best means by which fire and rescue authorities can be guided in their responsibilities, while continuing to serve the interests of both their employees and communities. Placing such requirements in the pension regulations is not appropriate due to the lack of a power for the Secretary of State to make regulations requiring the fire and rescue authorities to take steps in relation to assisting their employees return to fitness or requiring employers to consider redeployment of employees. The power to establish a pension scheme only enables a pension to be paid in certain circumstances.

Clearly there is a balance to be struck between preserving the ultimate discretion of an employer, and providing a degree of certainty and security for the employee. We have no doubt that the vast majority of fire and rescue authorities, if not all, are excellent employers, and the Department sees it as its task to support them in this where appropriate and possible.

In the light of the last consultation, we now wish to offer two alternative revisions to the National Framework for consideration. These are presented at Annex A. We consider that with the passage of time and experience, it is worth respondents revisiting the issues, and identifying areas where their approach might have changed. We would also value comments on whether the proposed text could be improved.

We would be grateful if you could submit your response to the consultation to [melanie.gillett@communities.gsi.gov.uk](mailto:melanie.gillett@communities.gsi.gov.uk) by **9 December 2014**. Please contact 030 3444 1047 with any queries.

# Annex A

We are consulting on two possible changes to the Fire and Rescue National Framework for England. The two proposed textual changes are as follows:

## Proposed change 1

### **Fitness**

Firefighting is a physically demanding occupation and it is essential that firefighters have sufficient levels of fitness to enable them to carry out their tasks as safely and effectively as possible. As such, this requires higher levels of fitness than most other occupations and therefore the National Joint Council role maps set out a specific requirement for operational personnel to maintain levels of personal fitness

The Government believes that fitness standards must reflect the occupational demands of firefighting and the Secretary of State has agreed that the Chief Fire and Rescue Adviser will chair a joint working group, which will include an evaluation and assessment of safe standards.

The Government has also agreed to undertake an independent review in due course to ensure that appropriate fitness standards, training, testing, monitoring and management policies and procedures are in place in each fire and rescue authority .

It is also recognised that fitness levels may decline with age and whilst this may be mitigated by fitness training, diet and other lifestyle changes it is acknowledged that there may be a general decline in fitness as a result of the ageing process.

Fire and rescue authorities have an important role in helping to ensure their firefighters remain fit, and are supported in remaining in employment.

### **Each Fire and Rescue Authority must:**

**have a process of fitness assessment and development to ensure that operational personnel are enabled to maintain the standards of personal fitness required in order to perform their role safely;**

**ensure that no individual will automatically face dismissal if they fall below the standards required and cannot be deployed operationally;**

**ensure that all operational personnel will be provided with support to maintain their levels of fitness for the duration of their career;**

**consider where operational personnel have fallen below the fitness standards required whether an individual is able to continue on full operational duties or should be stood down, taking into account the advice provided by the**

**authority's occupational health provider. In making this decision, the safety and well-being of the individual will be the key issue;**

**commit to providing a minimum of 6 months of development and support to enable individuals who have fallen below the required fitness standards to regain the necessary levels of fitness;**

**refer an individual to occupational health where underlying medical reasons are identified that restrict/prevent someone from achieving the necessary fitness and that individual must receive the necessary support to facilitate a return to operational duties; and**

**fully explore opportunities to enable the individual to remain in employment including through reasonable adjustment and redeployment in role where it appears the medical condition does not allow a return to operational duties.**

In those circumstances where there are no such opportunities and suitable alternative employment is either unavailable or, where available, is not agreed by the individual, then the Fire and Rescue Authority will commence an assessment for ill-health retirement through the IQMP process.

## Proposed change 2

### Proposal 2

The same as proposal 1, but with the addition of a further principle after the last paragraph above:

If no underlying medical issues are identified and following a programme of development and support it becomes apparent that an individual will be unable to regain the necessary levels of fitness, then a fire authority will fully explore opportunities for reasonable adjustments and/or suitable alternative employment. In those circumstances where there are no opportunities for reasonable adjustments or suitable alternative employment, the fire authority will in the case of an employee aged at least 55 consider commencement of the authority initiated early retirement process for it to determine whether the individual should be retired with an authority initiated early retirement pension.

Please give your views on each of the proposed revisions, if possible indicating any preferences and or textual amendments:

Proposal 1

Proposal 2

### **APPENDIX 3**

Please give your views on each of the proposed revisions, if possible indicating any preferences and or textual amendments:

#### **Proposal 1**

Recommend no changes as the Authority agrees with the proposal. Leicestershire Fire and Rescue Service currently incorporate these proposed changes into our policies and procedures.

#### **Proposal 2**

Although it is agreed that reasonable adjustments and redeployment will need to be considered, it must be noted that the Authority retains the option, provided to it in employment law, to dismiss an employee where appropriate circumstances are in place.

There is a clear risk to the Authority by placing unfit personnel in an operational role. There are currently no non-operational roles that can support such an individual and it is noted that this would require a two tier level of firefighter with differing pay levels.

The CFA cannot agree fully with “...the fire authority will in the case of an employee aged at least 55 consider commencement of the authority initiated early retirement process for it to determine whether the individual should be retired with an authority initiated early retirement pension”

This clearly is placing a duty on the CFA to consider this in all cases. The CFA cannot commit to commencing an Authority initiated early retirement. This is not a mandatory requirement of the pension scheme and would require the Authority to fetter our discretion. The statement as read, in our view is not legally possible to enforce. The CFA has no existing policy that allows for an Authority initiated early retirement at cost. This reinforces that the proposed change is also unlikely to be considered due to the unquantifiable financial risk involved.

The recent research into firefighter fitness will incorporate a more holistic way to assess fire fighter fitness, in that fire services can have a dual approach to measure fitness through Vo2 max and timed/paced job related tasks. This will therefore offer better scope to determine fitness for the role.

It is to be noted that women are at a disadvantage as physiologically they will change as they get older therefore it becomes more difficult to maintain similar levels of fitness. That further work on this issue through the Fitness Working Group is supported by the CFA.