

FIREFIGHTERS' PENSION SCHEME 1992

**NEW FIREFIGHTERS' PENSION SCHEME
2006**

**FIREFIGHTERS' COMPENSATION SCHEME
2006**

Guidance for Independent Qualified Medical Practitioners (IQMPs) providing an opinion on permanent disability, fitness for regular work, qualifying injury and degree of disablement.

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Firefighters' Pension Committee

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Guidance for Independent Qualified Medical Practitioners (IQMPs) providing an opinion on permanent disability, fitness for regular work, qualifying injury and degree of disablement.

Amendments made to the Guidance

- October 2012 - Changes have been made to the section entitled '*Assessment of disablement for regular employment*' (paragraphs 3.16 to 3.24 of the guidance) in order to reflect apparent disparities between the requirements of the 1992 and 2006 Schemes with regards to the qualifying criteria for entitlement to the higher tier ill-health pension.

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Introduction

1. The Firefighters Pension Scheme 1992 (FPS) and the New Firefighters' Pension Scheme 2006 (NFPS) provide for early payment of benefits to scheme members who are found to be permanently disabled to undertake the duties of their role (formerly rank): the level of benefits payable to a member is determined by length of service, final pensionable pay and capability to undertake regular employment. The Firefighters' Compensation Scheme (FCS) allows the award of further benefits where the incapacity has been occasioned by a qualifying injury: the level of benefits payable is determined by his or her earnings capacity.
2. Certain benefits can also be provided to firefighters who chose to opt out of the FPS or NFPS, or for those who before 2006 were not permitted entry to the FPS, i.e. those employed as Retained Duty System (RDS) or volunteer firefighters.
3. In the case of a former firefighter who is in receipt of an injury award and in respect of whom a determination was made before April 2006, and whose case is the subject of review, the matter would be dealt with under the provisions of the FPS rather than the FCS. In practice this has no significance as the FCS mirrors the provisions which were repealed. In the circumstances this guidance does not refer to such cases separately.

III health retirements

4. The medical prognosis is the key input to the final decision as to whether to grant ill health retirement. But the decision to grant ill health retirement, or refuse it, should not be taken by the medical practitioner. This is a decision that can only be taken by the employer, although the authority will be bound by the opinion of the medical practitioner on medical issues.
5. In effect, three decisions have to be taken during the consideration process:
 - First, the decision whether to end an employee's contract. This can only be taken by the employer. Management need to make decisions on any non-medical aspects of the case before consideration for onward referral.
 - Second, the medical decision on whether or not the case meets the criteria within the pension scheme for ill health retirement and the award of an ill-health pension, which must be determined by a suitably qualified occupational health doctor.
 - Third, the employer's decision, based on the medical opinion, on the terms under which the employee should leave.
6. This guide is concerned with the second stage of the process, i.e. the medical decision. The FPS and the NFPS require that the medical assessment is objective and impartial and both schemes require a clear separation in the role and responsibilities of the Medical Adviser (MA) to the Fire and Rescue

Authority (FRA) who first sees the applicant, and the independent qualified medical practitioner (IQMP) who advises whether the scheme criteria have been met, thus ensuring that the medical assessment is objective and impartial. The role of the MA is to compile the medical evidence relevant to the case and the role of the IQMP is to consider the evidence and, if necessary, examine the applicant, and advise the FRA whether the scheme criteria are satisfied. The opinion of the IQMP is binding on the FRA on all matters referred under Rule H1(2) of the FPS, Part 8, rule 2(2) of the NFPS and Part 6, rule 1(2) of the Compensation Scheme including those which are wholly or partly of a medical nature.

7. Where an operational firefighter is thought to be unfit for his/her operational duties, the question for the IQMP is whether he/she is permanently disabled for the performance of that duty. If the IQMP is of the opinion that he/she is permanently disabled for operational firefighting, then an additional question may be whether he/she is also disabled for any other duty appropriate to their role.

8. As noted in the judgment of the Court of Appeal in the case of Marrion & other¹, the role of a firefighter contains much that is outside firefighting itself and might exist in the absence of operational firefighting. Where a firefighter is no longer fit for operational firefighting, as was made clear in Communities and Local Government's circulars 8/2008 issued on 24th October 2008 and 8/2009 issued on 9 September 2009, the onus is on a fire and rescue authority to make every effort, through reasonable adjustments, including reasonable re-designing of jobs within an authority, to enable and encourage firefighters to stay in work if they can within their role, rather than be retired early. In the case of retained duty system firefighters, any redesign and readjustment should be consistent with the duty system.

9. But, of course, it will not always be possible for firefighters to stay in work. In considering the case for ill-health retirement, the fire and rescue authority will need to consider the application of the criteria in the regulations in the light of the facts and circumstances of individual cases. These facts and circumstances include the realistic prospect of suitable employment. This is not a simple matter: before reaching a final determination as to the absence of any suitable employment within the role the fire and rescue authority must consider whether they can create a suitable post through adjusting posts within their structure, rather than simply look at matching the employee to existing opportunities. The absence of a realistic prospect of suitable employment in the role at the end of this process is material to the decision on whether the criteria apply and whether an award is made.

10. Accordingly, before considering ill health retirement fire and rescue authorities should consider the possibility of redeployment, or the reasonable prospect of redeployment, within the role to such posts as are available for firefighters to take up either at that time, or within a reasonable period. CLG

¹ The Court of Appeal in The Queen on the application of Martin Marrion, Neil Robert Burke and Andrew Scott v The Board of Medical Referees, the London Fire and Emergency Planning Authority and the Secretary of State for Communities and Local Government [2009] EWCA Civ 450.

consider that - whilst it is not possible to lay down a rigid time frame - it would be reasonable to give three months as an indicative time, subject to the circumstances of the case. Accordingly, if there is a realistic prospect that a job within the role is likely to be available in that timescale, the fire and rescue authority should defer reference to the IQMP in order to redeploy. When that is not the case and reference is made to the IQMP, the fire and rescue authority should set out in its report to the IQMP all the steps it has taken in its management of the case.

11. As outlined, issues relating to redeployment should be considered by the FRA before the case is referred to the IQMP, but there is also the opportunity within the process for an IQMP to seek further clarification or for the FRA to raise particular points they would find helpful to get advice on.

12. The purpose of this guidance is to help IQMPs to understand what their role is in determining a medical opinion on the questions of permanent disablement for the member's role, capability for regular work, whether an injury is qualifying and calculation of degree of disablement. The ultimate objective is to enable IQMPs to provide FRAs with an opinion that is fair, consistent and supported by clear evidence and reasoning.

13. Throughout this guide the individual who is being assessed is referred to as "the member", since these procedures will normally apply to members of the FPS or NFPS being considered for ill-health retirement. However, there may well be occasions where the issue of permanent disablement for regular employment needs to be determined after the individual has retired from the service. In view of this the term "member" should be taken to include a retired member and also those individuals who are not members of the FPS or NFPS but may qualify for benefits as a result of a qualifying injury as part of an injury award under the FCS.

14. The guidance is divided into six sections:

- 1. Overview of the procedure**
- 2. The role of the FRA and IQMP**
- 3. Arrangements under the Firefighters' Pension Scheme, the New Firefighters' Pension Scheme and the Firefighters' Compensation Scheme**
- 4. Reasonable Adjustments**
- 5. IQMP assessment**
- 6 Glossary of Terms**

1 Part 1 Overview of the procedure

1.1 From April 2006 the way in which the ill-health benefits of the Firefighters' Pension Scheme (FPS) are calculated changed. The new system also applies to the New Firefighters' Pension Scheme (NFPS) and involves two tier ill health retirement awards. The lower tier provides for immediate payment of accrued pension, the higher tier provides a similar pension plus an enhancement. In addition provisions regarding injury awards have been transferred from the FPS to the Firefighters' Compensation Scheme (FCS) but remain unchanged.

1.2 A member of the FPS is entitled to an ill health pension if he/she has 2 years' pensionable service and of the NFPS if he/she has 3 months' eligible service; and is permanently disabled for the performance of duty. To satisfy the criteria for receipt of a pension, the member must be incapable of doing the job they are performing within their role (or would be performing but for the incapacity) or a suitable available alternative job within the role taking account of reasonable adjustments which the FRA confirms it can and will make. This should be based on the job which the member is performing when the case arises for consideration, but should also take full account of reasonable adjustments which the FRA confirms it can and will make to the job within the role, and suitable alternative jobs within the role identified by the FRA as actually available for the member to take up.

1.3 As set out in the introduction to this guidance, the onus is on the FRA to have carried out all the processes necessary to redesign and reasonably adjust such jobs within a reasonable timeframe, before referring a case to the IQMP, and to tell the IQMP what they have done. By the time a case is referred to the IQMP, in addition to details of the member's job within the role, the IQMP should also be given descriptions of any other jobs within the role which are actually available for him/her to take up and against which the disability may also be assessed.

1.4 In determining whether the disablement is permanent, regard must be had to whether it is likely to continue to normal pension age of 55 in the FPS or normal retirement age of 60 in the NFPS. If the person has resigned or opted out with a deferred pension the relevant ages are 60 and 65. Where these criteria are satisfied a lower tier ill health pension would be payable.

1.5 If it is decided that not only is the member permanently disabled for the performance of their duties but also for any regular employment, the member becomes entitled to an additional higher tier pension provided they have at least 5 years' pensionable service (FPS) or qualifying service (NFPS). Regular employment in this context 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. This requires consideration of the member's ability to work in any employment.

1.6 When a FRA is considering the question of ill-health retirement and the award of an ill-health pension for a member, it is required to refer the question of whether that member is permanently disabled from engaging in firefighting and the other duties of their role to the IQMP. The IQMP will normally be asked also to provide an opinion on the member's capability for regular employment.

Questions to be addressed by the IQMP

1.7 The questions to be addressed by the IQMP when providing a medical opinion fall into four stages and are as follows:

1. Is the member **disabled from performing their duty, i.e. as applicable to the job within their role** (with reasonable adjustments as appropriate as set out in the introduction)? If so, is that disablement likely to be **permanent**?

In accordance with the Court of Appeal's decision in *Marrion & others*, if redeployment is not possible, the question stops with the duties of the current job within role which the member had been carrying out and which may include operational firefighting.

If so, under the provisions of rule A15 of the FPS, the FRA may retire the person compulsorily, and under both schemes a lower tier ill health pension can be awarded.

2. If the member is permanently disabled for duty, is he or she **also disabled for regular employment (defined as 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)**?

This determines whether a higher tier award is payable.

3. Has any permanent disablement been caused by a **qualifying injury**?

If so, the FRA may make an injury award to be paid.

4. If disablement has been caused by a qualifying injury, what is the **degree of disablement**?

This determines the level of the injury award.

1.8 The two pension schemes and the compensation scheme require FRAs to carry out regular reviews of awards and therefore the IQMP may also be asked to determine if a retired member is still both permanently disabled for the last role they held in the fire and rescue service and/or is still incapable of regular work. This will occur when the FRA reviews the member's case once an award has been put into payment.

Part 2 The Role of the FRA and IQMP

The Role of the FRA

2.1 It is the role of the FRA to ensure adequate arrangements are in place for maintaining the fitness of firefighters and to manage sickness absence throughout an employee's working life through the use of robust systems for recording the incidence and causes of sickness absence. The FRA should have policies in place regarding prevention, rehabilitation and redeployment within the role. These policies may include limited use of the private health market. Triggers for action will include early and wide referral to occupational health.

2.2 In managing a member, referral will be made to the MA from time to time to confirm that they continue to meet general fitness criteria, to consider appropriate treatment options and to assist the individual in preventing further absence.

2.3 In the consideration of each case there may come a point at which management consider that the member's ill health is such that ill health retirement should be considered. The FPS, NFPS and FCS provide the gateway to ill health and injury awards and set out the criteria to be met for pension awards to be made. Although in the first instance the schemes allow for the FRA to determine what awards might be payable, there is a requirement for referral to an IQMP for an opinion on whether the criteria have been met. The opinion of the IQMP is binding on the FRA but it is the FRA who makes the final decision on awards and the level of award payable.

2.4 When seeking the opinion of an IQMP the FRA will refer the case to the MA to collate all the papers relevant to the incapacity under consideration. This **must** include all appropriate medical records e.g. GP records, occupational health records, X rays, scans, consultants' reports etc. When making the referral the FRA will also request a date on which the case should be reviewed. There is a statutory requirement to review ill-health awards where the individual has been in receipt of the award for less than 10 years and is under age 60 (FPS, Rule K1) or under State pensionable age (NFPS, Part 9, rule 1). The FRA is also required to review injury awards under Part 9, rule 1 of the Firefighters' Compensation Scheme.

The IQMP's role

2.5 The qualifications for, and role of, the IQMP are set out in the regulations for the appropriate scheme, namely in Rule H1 and Schedule 1 of the Firefighters' Pension Scheme 1992 (SI 1992/129) (as amended); Part 8, rule 2 and Part 1, rule 2 of the New Firefighters' Pension Scheme (England) Order 2006 (SI 2006/3432); and rule 2 of Part 1 and rule 1 of Part 6 of the Firefighters' Compensation Scheme (England) Order 2006 (SI 2006 /1811). The regulations specify the questions which the FRA must refer to the IQMP for an opinion before a decision can be reached. Guidance is available on the DCLG website at

<http://www.communities.gov.uk/fire/firerescueservice/firefighterpensions/>

2.6 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.

2.7 The IQMP must understand the purpose of his/her role and the procedures to be followed. This guidance covers the medical aspects and those procedures which affect the IQMP directly. More general information on the wider policy is set out in Firefighters' Pension Scheme Circulars which are issued from time to time and are available at –

<http://www.communities.gov.uk/fire/firerescueservice/firefighterpensions/circularsandguidance/>. The IQMP does not act as an occupational health advisor to the FRA, but performs a vital function in a process which will entail decisions about a firefighter's future employment and pension rights. 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. FRAs should ensure that the IQMP that they use is competent. Advice can be sought from ALAMA (The Association of Local Authority Medical Advisers).

2.8 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. Historically this has had a greater impact on decisions connected with qualifying injury than ill health retirement, with the "Jennings" judgement being of particular importance. The IQMP should also ensure that he/she clearly understands the job that the member performs or, in the case of a review, last performed in the Fire and Rescue Service. The FRA will provide details of that and, if the IQMP is not confident that he/she understands it, he/she should clarify any points of doubt before proceeding further.

2.9 When considering a case the IQMP should read carefully the documents in the file referred from the MA and the report provided by him or her. All the medical evidence provided by the FRA should be considered, including any GP records, occupational health notes, consultants' reports etc. The IQMP should have the full occupational health file and any management submissions relating to it, together with any relevant submissions made by the member or on his behalf, but would not necessarily be expected to examine the member before reaching an opinion.

Part 3: Arrangements under the Firefighters' Pension Scheme, New Firefighters' Pension Scheme and Firefighters' Compensation Scheme

Role of a firefighter

3.1 Under the terms of the Firefighters' Pension Scheme Order 1992 a regular firefighter (see definition in glossary) may be required to retire on medical grounds if he or she is permanently disabled for the duties of his or her current or proposed job that is available or likely to be available in the role as a firefighter. The Firefighters' Pension Scheme (England) Order 2006 allows for an ill-health pension to be paid if a regular, retained or volunteer member (again see definitions in glossary) leaves employment by reason of permanent disablement.

3.2 Since 2004 when the Fire and Rescue Services Act introduced a statutory duty for FRAs to promote fire safety, there has been a consequent shift of emphasis away from fighting fires (engaging in firefighting) to community fire safety and related work. As a result the member may be performing a job which does not involve firefighting, or of which firefighting is only a part.

3.3 As members gain promotion within the Service their duties and responsibilities change, with less, if any, emphasis on firefighting.

3.4 However, it must be recognised that without a relatively robust test of fitness the FRA would be unable to safeguard the operational effectiveness of the Fire and Rescue Service, since it would be obliged to retain too many firefighters who were unfit for the duties required for operational firefighting.

Disablement

3.5 Under scheme rules disablement is defined as :

"incapacity, occasioned by infirmity of mind or body, for the performance of duty....." (FPS, Rule A10)

"incapacity, occasioned by infirmity of mind or body, as makes him [her] unable to perform any duties of the role in which he [she] was last employed" (NFPS, Part 1 Rule 3)

Permanent Disablement

3.6 The scheme rules, (i.e. Rule A10 in the FPS, Part 1, rule 3 in the NFPS, and rule 8 Part 1 in the FCS) provide :

"References in this Scheme to a person's being permanently disabled are references to his [her] being disabled at the time when the question

arises for decision and to his [her] disablement being at that time likely to be permanent.”

The time when the question arises for decision should be interpreted as being the assessment or consultation date. The case should be looked at on that day and the opinion given as at that day.

The phrase “likely to be permanent” is also used in Rule H1(2) in the FPS, and Part 8, rule 2 in the NFPS, where the questions to be put to the IQMP are set out.

3.7 Under the FPS, in determining whether a disablement is permanent a FRA shall have regard to whether the disablement will continue until the person’s normal pension age i.e. age 55. The NFPS has a similar provision in Part 1, rule 3(3) which provides

“(3) In determining whether a person’s disablement is permanent, the authority shall have regard –

- a) in every case, to whether the disablement will continue until the person’s normal retirement age; and**
- (b) in relation to a person who has taken a deferred pension , to whether the disablement will continue until his [her] normal benefit age.”**

Normal retirement age in the NFPS is 60, and normal benefit age 65.

3.8 “Likelihood” of permanence for the purposes of the schemes is based on the ordinary balance of probabilities applicable in civil cases: in other words, the question to be answered is whether there is a better than even chance that the person concerned will remain disabled. An individual would not normally be expected to be considered permanently unfit unless all the appropriate treatment options available to the member have been exhausted without success but that need not be the case if the available treatments might alleviate symptoms but are unlikely to lead to a sufficient recovery to enable him/her to resume their job or such other job within the role as the FRA confirms is actually available for him/her to take up.

The questions to be decided by the IQMP

3.9 Rule H1(2) in the FPS and Part 8, rule 2(2) in the NFPS, provide that **before deciding, for the purpose of determining that question or any other question arising under this Scheme -**

- a) whether a person has been disabled,**
- b) whether any disablement is likely to be permanent**
- c) whether the person is also disabled for engaging in any regular employment (other than the role of a firefighter)**

- d) whether the person has become capable of performing the duties of a regular firefighter (FPS) or the role from which he retired on grounds of ill-health (NFPS).**
- e) any other issue wholly or partly of a medical nature**

And similarly under the FCS Part 6, rule 1(2) -

- a) whether any disablement has been occasioned by a qualifying injury,**
- b) the degree to which a person is disabled, or**
- c) any other issue wholly or partly of a medical nature**

the authority shall obtain the written opinion of an independent qualified medical practitioner selected by them; and the opinion of the independent qualified medical practitioner shall be binding on the authority.

3.10 “Any other issue” under the FCS would also include relevant issues raised by the provision in Part 2, rule 3 for compensation for death or permanent incapacity while on duty.

3.11 When considering fitness for regular employment, all employments inside and outside the Fire and Rescue Service must be considered.

3.12 The decision regarding an individual’s fitness for both their job within their role in the Fire and Rescue Service and regular employment will be made within the context of medical reports, information provided by the individual and the MA’s and IQMP’s observations.

3.13 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 to give an opinion on medical fitness for work or eligibility to access pension benefits as this will often be outside their area of expertise.

Assessment of disablement for the duties of the member’s role

3.14 The assessment of whether a member is permanently disabled for the duties of their role may not necessarily require the full application of the procedures set out in this guidance. If it is decided that the member is not permanently disabled for his/her role then the question of capability for regular work will not arise.

3.15 A firefighter is permanently disabled if he/she is medically unfit to carry out the duty expected of him/her as outlined in the report provided to the IQMP by the FRA. The decision about permanent disablement will be specific to the job of the firefighter within the role, so it is important for the IQMP to be familiar

with the specific requirements of that job within the Fire and Rescue Service. As set out in 1.2 above, this should be based on the job which the member is performing when the case arises for consideration, but should also take full account of reasonable adjustments which the FRA confirms it can and will make to the job within the role, and suitable alternative jobs within the role identified by the FRA. However, if the FRA confirms that no suitable alternative duties are available, the question is limited to considering whether the member is permanently disabled from performing the duties of the current job which they had been carrying out. This may include operational firefighting.

Assessment of disablement for regular employment

3.16 In a case where the IQMP finds that a member is permanently disabled for the duties of their role, the IQMP is then required to examine in detail the member's capability for work-related activities in any capacity in order to determine whether he or she is also incapable of regular employment. It should be noted that in respect to this assessment, the requirements of the 1992 Scheme and the 2006 Scheme are different. Under the 1992 Scheme, when making an assessment on a member's disablement for regular employment, the IQMP is required to consider whether the member is incapable of "undertaking regular employment", whereas, under the 2006 Scheme regulations, the IQMP is required to consider whether the member is "permanently disabled from undertaking regular employment".

3.17 The purpose of this stage of the assessment is to determine the extent to which the member's functional capacity is affected by a disability or a medical condition which renders him or her incapable to undertake regular employment. For the purposes of this assessment regular employment is "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".

3.18 If the member is not incapable of regular employment, the IQMP should indicate which areas of regular employment the member is, or would be, capable of undertaking in the longer term, allowing for any adjustments which could generally be expected of a reasonable employer.

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

3.20 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**.

3.21 The procedure set out here provides for a thorough assessment of fitness by the IQMP. Where the IQMP considers that an aspect of the member's medical history needs closer examination he or she should recommend referral to a specialist. The FRA would be expected to bear the costs of any such referrals.

3.22 The IQMP considers all the information referred and provides a written opinion. This opinion is then used by the FRA to decide if ill-health retirement is appropriate, what level of benefits is due and, if applicable, entitlement to an injury award. The opinion of the IQMP is binding on the Authority whether or not the MA agrees with it. It is not permissible under the regulations for a FRA to seek a second opinion from another IQMP.

3.23 The member has the right of appeal against the opinion of the IQMP to the Secretary of State who refers the case to the Regional Board of Medical Referees. The decision of the Board is binding on the FRA.

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

Assessment of whether there is a qualifying injury.

3.25 In order to be entitled to an injury award under the provisions of the FCS the member must first establish that he/she is permanently disabled and that the infirmity was occasioned by a qualifying injury.

3.26 The purpose of this assessment is to determine whether there has been a qualifying injury. Qualifying injury is defined under Part 1, rule 7(1) as:

"an injury received by a person without his [her] own default, in the exercise of his [her] duties as a regular firefighter".

Part 1, rule 7(5) says that **"For the purposes of this Scheme an injury shall be treated as having been received by a person without his [her] default unless the injury is wholly or mainly due to his [her] own serious and culpable negligence or misconduct. "**

Rule 9 of Part 1 provides that **"....any infirmity of mind or body shall be taken to have been occasioned by an injury if the injury caused or substantially contributed to the infirmity....."**

Note that Part 1, rule 2 defines "injury" as also including disease.

Substantial is not defined and will differ in each case. This is more than de minimis.

3.27 When referring a case for consideration of whether the member has suffered a qualifying injury the FRA will provide both details of the incapacity under consideration and any known relevant accidents/index incidents. The FRA should also inform the IQMP whether or not the FRA has accepted that

any index incident arose in the exercise of duty. This decision is for the FRA to make and should be decided before referral to the IQMP.

3.28 The IQMP must consider the aetiology of the incapacity by reviewing the processes and factors that may have contributed to the disablement. The full history, medical evidence and other relevant evidence should be considered.

3.29 The qualifying occupational factors must then be identified and their relative contribution determined. The effects of off duty incidents, pre-existing conditions or other non work related factors should be considered when determining how much of the incapacity was related to the alleged injury on duty.

Degree of disablement

3.30 After establishing that the person's disablement has been occasioned by a qualifying injury, the next step is to consider the extent to which the injury has caused or substantially contributed to the permanent disablement, before considering the degree of disablement.

3.31 When considering the type of work an individual might undertake both functional capability and skills/competence must be taken into account. The FRA should provide details of the firefighter's skills, educational qualifications, etc, and an indication of the types of alternative employment they think appropriate. Reference to any secondary employment which the firefighter may have taken whilst employed as a firefighter, the primary employment of a member of the retained duty system, or previous employments may also be relevant here. The medical opinion would then be sought on whether the member could carry out these alternative employments and, if not, what would be within their capability from a medical viewpoint: as skills/competence are matters for the FRA, the IQMP may need to confirm with the FRA that the individual has the necessary skills/competence. Normally, an average of earnings from three agreed employments would then be used to calculate the degree of disablement.

3.32 Each case should be considered on its merits and a set range of employments depending on the role within the Fire and Rescue Service should be used. As an individual's experience both within the service and outside changes, the nature of alternative employment should also change to embrace the further skills acquired. An individual may have a range of skills not needed by a firefighter and these should not be excluded from consideration. Technical and professional qualifications acquired whilst the person was employed by the Fire and Rescue service may be relevant.

3.33 The calculation of degree of disablement can never be an exact science as opinions on capability will always be involved, but consistency of approach is essential if awards are to be fair both at the time of the decision and in the future. National rates of pay from the ASHE (Annual Survey of Hours and Earnings) tables published by the Office of National Statistics should be used

when calculating degree of disablement. All ASHE tables provide both mean and median figures. The use of median is considered fairest as this covers the majority, rather than including the extremes. A firefighter's job is a mobile one and there are national rates of pay: the expectation is, therefore, that the member is capable of working outside any particular locality. It is appropriate, therefore, that national rates of pay are used without supplements or allowances.

3.34 Because injury and disease often result from a combination of causes, apportionment should be used to avoid liability for non-occupational factors., e.g. a non-duty injury, and injury received through default, or some other cause. This has been recognised by the Administrative Court (see *R(oao South Wales Police Authority v Anton & Crocker [2003] EWHC 3115 (Admin)*).

3.35 Before apportionment can arise each factor must separately have caused some degree of loss of earnings capacity on its own (see paragraph 3.37 below). In considering apportionment the IQMP will therefore need to consider the issue of causation. This is a separate exercise from testing for entitlement to an injury award by reason of the injury causing or substantially contributing to the disablement. However, as in the case of determining whether disablement is attributable to a qualifying injury, the IQMP will have to consider apportionment on the basis of the evidence and applying his or her medical judgment.

3.36 The simplest case of apportionment is where there are two separate causes of loss of earnings capacity, each making a contribution to the loss. Where, for example, a person is disabled on account of a medical condition occasioned by a qualifying injury and partly by another medical condition, the degree of disablement must be assessed on the basis of an apportionment of the disablement to take account only of the condition occasioned by the relevant injury.

3.37 Apportionment may also be appropriate where there is no other medical condition but where it is found that there has been more than one injury involved which causes loss of earning capacity and where not all the injuries were received in the execution of duty. In such a case the percentage of degree of disablement should be apportioned, applying the same proportion that the injury or injuries in the execution of duty have contributed to the loss of earning capacity as a result of the disablement.

3.38 There is also the situation where loss of earning capacity is attributable to a qualifying injury exacerbating a pre-existing condition. Apportionment is appropriate here only where the underlying condition, on its own, had also caused a loss of earning capacity. The suggested test is the question: Would there have been a loss of earning capacity but for the injury?

3.39 How should cases be apportioned in practice. This is primarily a matter for medical expertise and the following model has been offered by ALAMA as a guide to good practice.

- 1. Consider the aetiology of the disablement:** review the aetiological processes and factors that may have contributed to the disablement by reference, as necessary, to reputable texts and relevant peer-reviewed journal articles.
- 2. Consider history, medical evidence and other relevant evidence:** review OH records, hospital records, GP records, accident records, sickness absence records and any other relevant evidence and undertake further medical assessment of patient if necessary.
- 3. Identify qualifying occupational factor(s):** ensure all relevant qualifying occupational aetiological factors are included.
- 4. Determine relative contribution(s) of qualifying factor(s):** ascribe qualifying occupational factor(s) a % contribution to the disablement and total as necessary to establish combined contribution of qualifying occupational factors to disablement.

The % figure resulting from 4 above represents the apportionment. This figure should be applied to the % reduced earnings capacity to establish the degree of disablement.

3.40 When providing the opinion of the IQMP, it must be made clear what percentage is apportioned as qualifying. Many appeals arise because the member does not understand how the degree of disablement has been assessed and it is worth spending time ensuring that the calculation can be understood, particularly where the percentage Reduced Earnings Capacity and Degree of Disablement are not the same due to apportionment, which may reduce the final percentage awarded.

3.41 Bands of degree of disablement are as follows –

- 25% or less (slight disablement)
- More than 25% but not more than 50% (minor disablement)
- More than 50% but not more than 75% (major disablement)
- More than 75% (severe disablement)

3.42 In calculating the degree of disablement the following steps should be followed:

1. Establish Permanent Disability (PD)
2. Confirm Qualifying Injury (QI)
3. Apportion contribution of QI to PD (%)
4. Identify functional limitations of PD
5. Determine reduced earnings capacity (REC) due to functional limitations
6. Use REC% and apportionment % figures to calculate Degree of Disablement

Examples of assessment of Degree of Disablement

Assume firefighter's pensionable pay is £23,391

Assess REC%:	a) Local Government clerical officers	£17,929
	b) Security guard and related occupations	£17,641
	c) Debt, rent and other cash collectors	£17,238
Average a+b+c		£17,602

$$\text{REC} = \frac{\text{Pensionable salary as firefighter} - \text{average of a-c}}{\text{Pensionable salary as firefighter}} \times \frac{100}{1}$$

$$= \frac{\text{£23,391} - \text{£17,602}}{\text{£23,391}} \times \frac{100}{1}$$

$$= \frac{\text{£5789}}{\text{£23,391}} \times \frac{100}{1}$$

$$= 24.74\% \text{ (slight disablement)}$$

If the apportionment was considered to be 50% -

$$\begin{aligned}\text{D of D} &= \% \text{ REC} \times \% \text{ Apportionment} \\ &= 24.74\% \times 50\% \\ &= 12.37\%\end{aligned}$$

Degree of disablement is therefore 12.37%.

3.43 It is the responsibility of the FRA to provide the IQMP with the pensionable earnings of the firefighter and the potential earnings capacity (i.e. average a+b+c). Although the degree of disablement calculation is not a medical matter it could be calculated either by management and countersigned by the IQMP, if agreed by him/her, or calculated by the IQMP. Either way, the IQMP must confirm his/her agreement in writing since their opinion on this question is binding upon the FRA.

3.44 The same IQMP who certified permanent incapacity can also certify for an injury award at a later date if needed (In most cases, the decision about injury award will be made by the IQMP at the same time as the decision about permanent incapacity.)

Reviews

3.45 Under Part 8, rule 3 of the NFPS 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 parties agree that the IQMP who produced the opinion upon which the decision was based should be given the opportunity to review his/her opinion. Also, under Part 8, rule 2 of the NFPS if an ill-health award is to be reviewed at a later date, the FRA can request the IQMP who

provided the original opinion to provide a new opinion for the review. However neither the FPS nor the FCS provide for the "reconsideration" review as allowed under Part 8, rule 3 of the NFPS. Nor do they permit an IQMP who has produced an opinion on a previous occasion to provide the opinion at a later review. The selected IQMP must have had no previous dealings with the case.

Part 4: Reasonable adjustments

4.1 The Disability Discrimination Act (DDA) makes it unlawful, amongst other things, to discriminate against disabled people in employment. The aim of the DDA is to remove barriers and give disabled people the opportunity to compete for jobs and to exercise their skills and abilities in employment. The DDA should help disabled people to gain equal access to the opportunities, challenges and rewards of employment. This applies to the Fire and Rescue Service just as in any other employment.

4.2 In cases where the IQMP decides that the firefighter is permanently disabled for duty he or she should then go on to provide a capability report in order to assess in the first place, fitness for regular employment. In reaching a final decision on fitness for regular employment the IQMP will need to make an assessment on whether the firefighter could be expected to be assisted in the workplace by reasonable adjustments. The IQMP in considering this will also need to give an opinion on whether the firefighter could carry out the duties of any alternative job within his/her role which the FRA is able to offer him/her.

Reasonable adjustments for regular employment

4.3 Before coming to a final decision about permanent disablement for regular employment in any particular case, the IQMP will need to take into account, where appropriate, what adjustments the firefighter could reasonably be expected to receive and whether they could be effective.

4.4 It is recognised that it will be difficult for the IQMP to provide more than a general assessment of the sort of adjustments that an employer could reasonably be expected to provide for the firefighter to be able to carry out an activity of which he or she would be otherwise incapable.

4.5 It is for the FRA to decide whether reasonable adjustments will be made.

Part 5: IQMP Assessment

5.1 There are normally three stages in performing the assessment. These are:

- Reading the guidance
- Reading the documents
- Completion of the medical opinion and referral back to the FRA.

5.2 The MA must examine the member in all cases, but only in certain circumstances would the IQMP be expected to do so. In the majority of cases the IQMP would consider the report from the MA in the light of all other documentation provided and be able and comfortable to make the decisions using the information provided by the FRA. There may be cases where the IQMP decides that a face to face interview and examination is needed and such decisions will be left to the discretion of the IQMP. If the IQMP decides that he/she needs to actually see the firefighter, it will be the responsibility of the FRA to arrange a suitable appointment with the IQMP.

5.3 If the firefighter refuses to permit access to any of the medical records the two pension schemes and the compensation scheme allow for any assessment to be made on the basis of the information available but reference to this fact must be made when referring papers to the FRA.

5.4 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-psychosocial issues

5.5 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.

PART 6: Glossary of terms

Disablement: In determining whether a disablement is permanent, the FRA will have regard to whether the disablement will continue until normal pension age (FPS) or normal retirement age (NFPS).

Subject to the paragraph below disablement means incapacity, occasioned by infirmity of body or mind, for the performance of duty

Where it is necessary to determine the degree of disablement it shall be determined by reference to the degree to which the member's earnings capacity has been affected as a result of a qualifying injury. If as a result of such an injury, he [she] is receiving in-patient treatment at a hospital he [she] shall be treated as being totally disabled.

Independent Qualified Medical Practitioner: The IQMP is defined in the Firefighters' Pension Scheme, the New Firefighters' Pension Scheme and the Firefighters' Compensation Scheme as "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 the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003".

Injury : includes disease

Normal Pension Age: (FPS) – 55

Normal Retirement Age: (NFPS) – 60

Pension: a pension under the Firefighters' Pension Scheme or New Firefighters' Pension Scheme

Qualifying injury: references in the FCS to a qualifying injury are references to an injury received by a person without his [her] own default, in the exercise of his/her duties as a firefighter.

For the purposes of the FCS an injury shall be treated as having been received by a person without his [her] default unless the injury is wholly or mainly due to his/her own serious and culpable negligence or misconduct.

Regular employment: this 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.

Regular firefighter: in relation to any time after 29th February 1992 but before 13th September 2004, the expression means a whole-time member of a brigade

appointed on terms under which he [she] is or may be required to engage in firefighting whose appointment is not a temporary one.

In relation to any time on or after 13th September 2004 and before 1st October 2004 the expression means a whole or part-time member of a brigade, other than a retained or volunteer member of a brigade, appointed on terms under which he [she] is, or may be, required to engage in firefighting or, without a break in continuity of such an appointment, may be required to perform other duties as appropriate to his [her] role as a firefighter (other than, or in addition to, engaging in firefighting) and whose appointment is not a temporary one.

In relation to any time after 1st October 2004 the expression means a person who is employed –

- a) by a fire and rescue authority as a firefighter (whether whole-time or part time) other than as a retained or volunteer firefighter, and
- b) on terms under which he [she] is, or may be, required to engage in firefighting or without a break in continuity of such employment, may be required to perform other duties appropriate to his [her] role as a firefighter (whether instead of, or in addition to, engaging in firefighting) and whose employment is not temporary.

Retained member: In relation to any time after 13th September 2004 but before 1st October 2004, the expression means a member of a brigade who –

- (a) is obliged to attend –
 - (i) at the station to which he [she] is attached for training and maintenance duties for an average of 2 hours each week (or such lesser time as the officer in charge of the station, subject to any orders of the Chief Officer, considers necessary) and promptly, at any time, in response to a call; and
 - (ii) at any other station for reserve or standby duties in accordance with any orders he [she] receives; and
- (b) receives a training fee and such other fees as appropriate in respect of those duties.

In relation to any time on or after 1st October 2004 and before 6th April 2006 the expression means a member of the fire and rescue service who is obliged to attend –

- (a) at the station to which he [she] is attached for training, development and maintenance duties for an average of 2 hours each week and, promptly, at any time in response to a call; and

(b) at any incident or other occurrence, or at any other station for standby duties during the employee's period of availability.

In relation to any time on or after 6th April 2006 the expression is combined with that of a volunteer firefighter – see the definition of "Retained and volunteer firefighter" below.

Volunteer member of the fire and rescue service: a member of the fire and rescue service who is obliged to carry out the duties set out in paragraph a) of the definition of retained member, but does not receive a retaining fee or other fees, as appropriate, in respect of those duties.

Retained and volunteer firefighter: in relation to any time on or after 6th April 2006 this means a person employed by an authority -

- a) as a firefighter, but not as a regular firefighter,
- b) on terms under which he [she] is, or may be required to engage in firefighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to his [her] role as a firefighter (whether instead of, or in addition to, engaging in firefighting),
- c) otherwise than in a temporary capacity, and
- d) who is obliged to attend at such times as the officer in charge considers necessary, and in accordance with the orders that he [she] receives.