

# FBU response to the Brigades responses to the proposed industrial action

It is only right that we respond as management has, so as to ensure that all members are receipt of the facts.

The brigade response is in black the FBU response is in red.

## Introduction

**Q:** Has the Brigade breached the national protocol on industrial relations?

**A:** No the Brigade has abided by the protocols throughout. It is the FBU which has breached the protocols by:

**FBU A:** Yes, the Brigade has broken the national protocol on industrial relations: They have constantly refused that items should be the subject of either meaningful negotiation or consultation, the Brigade offers the FBU changes to policies or brings in new policies, then asks the FBU for their opinion and then ignores the vast majority of comments made because they do not comply with the Brigades opinion.

Raising issues for the first time in their letter setting out the matters subject to the ballot (e.g. DACs to be able to transfer to Grey Book posts).

- Proceeding to a ballot when matters are still under discussion within the machinery (e.g. drugs and alcohol)

**FBU A:** The FBU has stated that they are prepared to meet and negotiate on this issue but management has made clear that they are not prepared to negotiate, we received the following from both James Dalglish and AC Jon Webb:

James Dalglish stated in his email to us;

*“I recognise that the FBU remains of the view that the issue is negotiable and not consultative, and as you know that is not a view shared by the Brigade. I have repeatedly said I am happy to meet to seek to reach agreement with the FBU on all aspects of the Drugs and Alcohol Policy and am happy to involve the Joint Secretaries if that assists. I wouldn’t wish that offer to be taken as meaning that there is further IR discussion to be had. For the avoidance of doubt discussions within the IR machinery have been concluded”.*

AC Jon Webb Stated in his email to us via H&S Jt Sec;

*“In terms of a reasonable time to consult on this issue, 28 days would seem more than reasonable for you to provide us with any concerns that you have, along with any evidence that supports them and we will give them due consideration. If you have not provided a response within that timescale we will have*

*no choice but to proceed with the implementation of this risk control measure that will clearly further enhance and secure the safety of firefighters”.*

- Raising issues that have never been matters of dispute (e.g. recording of sickness absence)

FBU A; Under any trade dispute registered with our employer we are permitted to raise all matters that are causing our members concern regardless of whether that have been the subject of consultation or negotiation, however on this matter we had raised concerns informally via half and nil pay appeals, further we have been contacted by many members concerned that their sickness period should be the subject of DTS recording yet managers have been directed not to record as DTS or instead record as NDTS or they been told that some are DTS for pay only.

- Claiming the Brigade has decided things when they haven't (e.g. deletion of the Area Manager post).

FBU A; It is true that the LFB have not yet said that they will definitely remove the role from the establishment, however they have threatened the last remaining area manager with demotion and James Dagleish wrote to us on the 18<sup>th</sup> March 2009 stating;

*“I am writing to advise you that it is proposed to delete the role of Area Manager from the Brigade establishment with effect from 01<sup>st</sup> July 2009. The Brigade is happy to consult with you on this proposal up to the 30<sup>th</sup> June and to consider any representations you may have on the issue. If the Brigade decides to implement this proposal, the individual affected would be offered a Group Manager post and would apply the national agreement (circular NJC 9/05) to the individual affected which provides for pay protection for three years adjusted by the NJC annual general pay review which applies from 01<sup>st</sup> July each year”.*

**Q:** Did the Commissioner offer to meet the FBU to discuss industrial relations before there was any suggestion of an Industrial Action ballot?

**A:** Yes, the Commissioner offered to meet to discuss this but as soon as a date was offered the FBU circulated a model resolution calling for industrial action.

FBU A; This is true, in that the commissioner did offer to meet with us and that meeting went ahead, however the resolution was not circulated because of the planed meeting request, but was in fact due to a mistake on our behalf which we were correcting, we had issued our circular on 20<sup>th</sup> May 2009 before any proposed meeting which also outlined all the issues.

**Q:** Is it true that the FBU served notice of the industrial action ballot on the Brigade before completing the FBU's internal branch consultation?

**A:** The notification to ballot was received first thing in the morning on 9 July. The Brigade was aware that FBU branches had been given until 12 July to debate the issue.

FBU A; This is true, however we had made it clear that the decision to ballot was as direct consequence of the behavior of the brigade and their direction to restrict the H&S consultation to 28 days as above, further the London Regional Committee had agreed that having informed management via the JCF and JCMM of our intent that we would proceed to register the dispute and carry on with the branch consultation. It should be noted that the overwhelming majority of members have supported our stance during that consultation which is still on going.

**Q:** Has the Brigade had to warn the FBU that their proposed meetings on 21 and 31 July are in breach of trade union law?

**A:** Yes, the Brigade has had to tell the Union that its notice is unlawful and must be rescinded as it invites staff that are on duty to attend.

FBU A; It is true that the brigade has told us that our notice is wrong because we had not stated that on duty members could not attend without being granted facilities or time off to attend, however it is wrong to say that such an omission is unlawful, members are fully aware that they cannot simply leave fire stations to attend such meetings, neither have we called for members to do so.

**Q:** Has the Brigade blocked all emails coming in from the Fire Brigades Union?

**A:** Yes, this step was taken on 15 July. The Brigade first raised its concerns with the FBU in March 2009 regarding emails coming into the Brigade. The concerns were twofold. Firstly, the large attachments were utilising significant Brigade IT resources; the CoPUC (Code of Practice on Use of Computers) facility is for trade unions to use a bulletin board, and direct their members to that, rather than sending attachments to large numbers of users. Secondly, there had been complaints from non-FBU members who were receiving unsolicited FBU emails. The FBU undertook to resolve this via development of a London FBU website. By the time the FBU finally set up their website in July, the FBU was systematically breaching CoPUC by promoting industrial action in their emails into the Brigade. The Brigade cannot allow its IT resources to be used to promote industrial action, and so the decision was taken to block e-mails from the FBU.

FBU A; Our regional officials have put in a lot of their own time and have worked extremely hard to ensure that we got our website up and running at the bequest of the brigade, unlike the brigade we do not have the luxury of allocating resources full time to achieve such a web site, it is our opinion that the brigades actions are nothing more than childish, but not un expected by the FBU, but this attitude shows the contempt the brigade has for good industrial relations.

**Q:** Is the Brigade checking the FBU emails that are being blocked?

**A:** No. FBU incoming emails are being blocked by our anti-spam filter and are then immediately deleted by an automated process that requires no input from anyone else. They are neither being read, stored or forwarded.

FBU A; If the brigades response is true then this would bring into question of how the brigade intend to deal with issues such as discipline, medical appeals, industrial relations issues etc?

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## CPD

**Q:** Has the Brigade broken any agreement with the FBU on CPD?

**A:** No. The Brigade is honouring a national agreement to use sickness as part of the qualifying criteria. There is a managerial fast-track process available if eligible staff choose to use it, which the Brigade discusses with the FBU and FOA on an annual basis. Unfortunately agreement could not be reached for 2009/10 on a revised interim form process, but that is not a breach of any agreement.

FBU A; The brigade is not honouring the national agreement in fact that have gone out of their way to ensure that they have made it extremely difficult for members to receive their CPD payments, the interim process was an agreement which was reached through lengthy discussions in which it was confirmed by both sides that they would abide by accept for the tweaking of the tick box sections when required. Again the brigade attempted to impose change to the agreement through consultation without negotiation.

**Q:** Did the Brigade refuse to discuss any alternative proposals?

**A:** No. The Brigade sought further discussions with the FBU to try and resolve the outstanding issues and offered to defer the reduction in the absence requirement for a further year if the FBU was willing to agree to the link to sickness targets in future years. This was not accepted.

FBU A; This is true, we could not accept on the members behalf to agree for management to have the unilateral right to amend sickness figures simply because they chose to reduce the targets.

**Q:** Will I be adversely affected if I have had eight days' absence as opposed to nine days or more last year?

**A:** You will have to complete the national form instead of being able to complete the interim form. That will mean that you will have to submit more information on why you should receive a CPD payment instead of being able to access payment via the interim form.

**You will still be able to be considered for a CPD payment this year provided you meet the other qualification criteria.**

FBU A; Strange that the brigade answer does not correspond with the question clearly it will have an impact for some, however it should be noted that using the brigade argument for 8 days above then surely the same would have applied for 9 days?

**Q:** How many people are affected by the change?

**A:** 139 more staff will have to complete the national form because they had exactly eight days' sickness.

FBU A; If it only equates to 139 more staff then why are the brigade so insistent that the number of days should change?

**Q:** Why has the Brigade proposed to reduce the sickness qualification from nine days to eight?

**A:** The national scheme provides for individual fire and rescue services to use their sickness targets as part of the qualification criteria. That target was 7.3 days in 2008/09 and therefore the Brigade is proposing that those with eight days or more sickness cannot apply on the interim form. The target was over eight days in 2006/07 and 2007/08, hence the agreement to nine days for the last two years.

The criterion is consistent with that applicable for access to pre-arranged overtime and secondary employment (21 days sickness over three years).

**The proposed change is necessary to ensure that the local process is consistent with the national agreement.**

FBU A; this is not true, the national process does not provide individual fire and rescue services the right to use their sickness targets as part of the qualification criteria. The guidance states for the indicator achieving high levels of attendance; *“achieved satisfactory levels of attendance in accordance with local policy and/or targets. In making such a judgement fire and rescue service’s will wish to be mindful of any reasonable circumstance which may have impacted upon an individual’s ability to achieve this, and the individual’s usual attendance”*.

**Q:** Does the proposal fall foul of the national CPD process?

**A:** No, it is entirely consistent with it.

FBU A: Individuals do not have to complete evidence for every indicator, further it does not state that any local agreement needs to conform to other policies such as pre-arranged overtime or secondary employment. The brigade is simply making up the rules as they go along.

**Q:** Is it permissible to use a target period of more than one year?

**A:** The national agreement refers to meeting the local fire and rescue service target;

anything which was a higher standard would not comply, just as a lower standard would not. The national agreement does not specify the period for calculating sickness.

**FBU A;** The national process is an annual process therefore it cannot be right to use target periods of more than one year, this was the reason why agreement was made on an interim process.

**Q:** Are staff being punished for improving sickness levels?

**A:** No one is being punished for improving sickness levels; on the contrary, those with low sickness levels are being rewarded by making them eligible for the streamlined interim form process. Fewer people are affected this year by the sickness level requirement than when the sickness sift was introduced two years ago.

**FBU A;** Absolute rubbish, if members had not met the sickness targets for the previous two years would senior managers be asking the FBU if they could increase the number of sickness days to ten or more?

**Q:** Why should staff have to be subject to arbitrary and unrealistic targets which move every time they are achieved?

**A:** Sickness targets are set annually for a minimum of three years and are discussed at the Authority's Human Resources, Health and Safety and Environment panel where all the trades unions are represented. The Brigade's objective is to be in the top quarter of all metropolitan fire services and targets are set to achieve that. Targets are changed to reflect that objective and nothing else. We don't consider being in the top quarter as being unrealistic or unreasonable.

**FBU A;** If sickness targets are set for three years then why are the brigade intent on achieving six days by 2011? The brigade refuses to also accept that our members now routinely attend for duty unfit in the fear of losing CPD payments or the ability to carryout PAO and secondary employment. The result of such a fear is members attending for duty and spreading un healthy germs around the workforce or worse still placing others at risk of injury because of sustained injuries that could impair the ability to perform in a safe manner, a fact that the brigade refuses to accept.

**Q:** I completed the national form last year; according to the national agreement I shouldn't have to complete the national form again this year.

**A:** In most cases this will be true; eligible staff can complete the fast-track interim form instead. The national agreement states that each year Brigades will review and assess those in receipt of CPD to determine ongoing eligibility. In London this is done via the interim form. For the small minority who are subject to the sift we require a fresh national application as this means there are reasons why they need to demonstrate again fully why they should receive CPD.

FBU A; The question is true but the brigade response is false, the interim process was not designed for review and assessment purposes, it was designed as an improvement to the national process, it is only now that the brigade have stated that the interim form will be used for the purpose of review. The guidance does not say that individuals need to prove that they are eligible it is for the employer to prove that they are not. We remind you that that the expectation is that non- renewal of the payment would will be the exception.

**Q:** When will this be resolved and payments made?

**A:** All employees have been advised of the process, and those eligible to complete the interim process are able to do so if they wish. The aim was to enable payments to be made in July, and a large number of employees will be receiving their CPD payment in July. The interim form will continue to be available for at least another month.

FBU A; Had the brigade not sought to amend without agreement the interim process then we would not have been in dispute over this matter and all could have applied using either the interim or national process.

**Q:** The FBU is suggesting that we should all complete the national form but is balloting for industrial action demanding the interim form is reinstated using the 2008 sickness targets – what should staff do?

**A:** The FBU position is contradictory and unclear. The simplest approach is for all staff eligible to complete the 2009 interim process to do so. We will process both interim and properly completed national forms and the choice rests with the individual.

FBU A; The FBU position is not contradictory or unclear, we have asked members to support their trade union by boycotting the un agreed interim process and instead submit the national CPD application form, it is true that the interim process is simpler but the reasons for the brigade seeking members to use the form are not for the members benefit but for the brigades benefit, they are fully aware of the additional work load that the national form produces for managers and the brigade, this is why the interim form was created and this is also why the FBU have called for the boycott of the form.

**Q:** I filled in the national form last year and wasn't notified by 1 June if I was getting a CPD payment. The FBU says this is in breach of the national agreement.

**A:** Before 1 June, the Brigade and the FBU jointly agreed to discuss the matter further with the national joint secretaries to try and reach agreement on the interim form process and these discussions were held on 11 June. When agreement could not be reached, everyone eligible was contacted directly afterwards.

FBU A; This totally untrue, no agreement was made to delay the national process; the agreement was to seek third party intervention on the interim process only. Therefore the brigade is in breach of the national process for all those who completed the form last year, some 475 individuals.

**Q:** Wouldn't it be better if the attendance figures were agreed for a number of years to stop this constant changing?

**A:** The Authority's sickness targets are set for a number of years. We would be happy with a longer term deal either linked to the Authority's targets or to days absent.

**FBU A;** We have already stated that we are prepared to negotiate on any matter but we will not be dictated to, especially in cases where agreement cannot be reached and then the brigade simply imposes change contrary to members wishes.

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## **Alcohol and drugs policy**

**Q:** Is the Brigade planning to impose a Drugs and Alcohol policy?

**A:** No, the current policy has been in place since 1 January 2008. The FBU was fully consulted on the policy prior to its agreement by the Authority in September 2007. The FBU's comments on for cause and random testing were set out in the report to the Authority. The FBU did not oppose the introduction of the policy.

You can see the policy [here](#).

**FBU A;** The answer to this is in the brigades response, they see the matter as consultative, we have always maintained that this matter is the subject of negotiation, we have always maintained our opposition to the introduction of this policy, we did not maintain such an opposition to the original draft proposal in 2006 as this was consistent with the legal drink drive limit and did not submit our members to random testing.

**Q:** Why has the Brigade implemented for cause and random testing?

**A:** The London Fire Brigade is a safety-critical organisation, and it is therefore essential that it has policies that minimise risks due to alcohol and/or drug-related impairment. Random alcohol and drug testing is a legitimate part of the Brigade's overall approach, but the policy also emphasises the support available to staff who have dependency problems and wish to overcome them. There have been cases of staff being impaired at work due to alcohol and/or drug consumption, and this has to be eliminated due to the risks this entails.

**FBU A;** we are not promoting that members should drink alcohol before attending for duty, however we do support the legal drink drive limit should be the limit which is set for determining action under the policy, after all a motor vehicle travelling at speeds of 70mph on a motor way takes considerable cognitive response to control and if the law states that the legal drink drive limit is sufficient to maintain that cognitive control then the same should apply to our members.

**Q:** Is the policy a breach of contract?

**A:** No, the introduction of the policy has not breached staff contracts as all contracts are subject to the policies of the Authority. As stated above, the Brigade is a safety-critical organisation. The introduction of random testing is solely for safety-critical posts and is a policy that the Brigade is entitled to implement on health and safety grounds.

**FBU A;** Yes the brigade have breached contracts, it is true that the contract takes into consideration policies in force from time to time, but a policy implementation such as this must be the subject of negotiation, if not then what is to stop the brigade from writing a policy and introducing it without negotiation or consultation which instructs members to jump of a cliff when ordered to do so, or would this be a lawful order because we only implement it for safety-critical staff?

**Q:** Why is the Brigade using a lower limit for alcohol than that used for drink driving?

**A:** The acceptable limit for alcohol within the Brigade is lower than the drink-drive limit, but it is known that the impairing effects of alcohol increase in proportion to the amount consumed. The Brigade is entitled to take a safety-first approach and to have a low acceptable alcohol limit for staff whilst at work. Other fire services have a lower limit, as do Transport for London and the Metropolitan Police.

It is not appropriate for a safety-critical emergency service to have a policy which says it is reasonable for people to come to work after drinking alcohol. A move to the 80mg/100ml drink-drive limit would mean just that. It is safer and easier for staff to be clear that they should not drink before coming to work.

**FBU A;** the legal drink drive limit makes clear that staff should not attend for duty unfit due to alcohol, whilst the Met Police and Transport for London may have lower limits, it should be noted what salary remuneration those workers receive, as many of them agreed to the lower limits in favor of more salary remuneration.

**Q:** What happens now?

**A:** The Brigade met with the FBU and the National Joint Secretaries to the NJC on 11 June; regrettably agreement could not be reached. The main stumbling block was the insistence by the FBU that staff should be allowed to drink alcohol before coming to work provided they are within the drink/drive limit. As agreement could not be reached, the Brigade has started the consultation period within the Brigade's health and safety machinery.

**FBU A;** it is true that we could not reach agreement, it is not true that we want members to be allowed to drink before attending for duty, we believe the legal drink drive limit is a sensible approach. It is true that the brigade have sought to instruct that the matter be raised within the health and safety machinery and by pass proper negotiation in the IR

machinery.

**Q:** What is the evidence that there is a drink or drugs problem?

**A:** There have been a number of discipline cases as well as referrals to the Brigade's occupational health services. Overall we have identified 42 cases within the last two years.

**FBU A;** we have constantly asked for the evidence for over two years and this is the first time that numbers have been made available, interestingly there is no breakdown of the 42 cases identified, it is probably true to say that the majority of those 42 are referrals to OHU rather than discipline and this is to be supported, as we believe that employees with related problems should receive as much support as possible.

**Q:** Why is the policy only applying to operational staff; surely it should apply to everyone?

**A:** It does apply to everyone. All staff must abide by the 30mg/100ml blood alcohol level.

**FBU A;** whilst the limits may apply to all staff the further proposals in respect of random and causation testing don't.

**Q:** Why is the Brigade threatening to suspend and dismiss staff for having had a pint?

**A:** The Brigade is not planning any such approach. The aim of the policy is to change behaviour so that no one comes to work having been drinking or taking drugs. The aim is not to discipline staff. We have offered to talk to the FBU about implementation arrangements but they won't talk to us.

**FBU A;** the brigades response is utter rubbish, we have not stated that we are not prepared to talk to management in fact below is an extract of my email to James Dagleish on 15<sup>th</sup> June 2009;

***Your employees and our members deserve better and I had previously informed you that whilst we was prepared to work in partnership to deliver change, that change would not be delivered at the expense of our membership neither would it be based upon the FBU agreeing to change for change sake.***

***For the benefit of our members the FBU will continue to attend meetings in an attempt to reach agreement however, the FBU will now enter those meetings with a pre conception of the outcome of those meetings.***

**Q:** Won't staff be scared to come forward if they have genuine alcohol/drugs problems?

**A:** They should not have such concerns. The Brigade is committed to supporting to those

who come forward. This is set out very clearly in the policy. It is far better for everyone's safety that people do come forward and then they can be helped.

**FBU A; we would agree with the brigade here that members should not be scared to come forward, we want those members to receive support.**

**Q: Why are firefighters being singled out for random testing?**

**A: They are not; random testing will apply to all safety-critical posts. That covers all operational posts up to and including the Commissioner, all Control posts and a range of other jobs such as drivers.**

**FBU A; this may be the case but how contradictory when it comes to drivers who can legally drive fire appliances so long as they do not exceed the legal drink drive limits yet they could face dismissal and keep their license if they exceed the brigades limits.**

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## **Subsistence**

**Q: When did the current Subsistence and Public Transport Expenses Policy come into being, and why did the Brigade adopt its five miles and five hours rule?**

**A: The current Subsistence and Public Transport Expenses Policy was introduced in January 2006 with some minor amendments in June 2007. Up until then, the Brigade did not pay subsistence claims where an employee was within four miles from their normal place of work or was away for less than four hours.**

The new policy was amended to five miles and five hours in line with the Inland Revenue dispensation for treating payments as a "benefit in kind". The previous policy meant that those claims between four miles and four hours and five miles and five hours were treated as a "benefit in kind" under Inland Revenue rules and were therefore a taxable benefit, whilst those above five miles and five hours were treated as genuine expenses incurred and therefore non-taxable.

The Brigade considers that expenses should not be paid as a benefit in kind; they should be paid to reimburse genuine expenses. The current policy reflects the Inland Revenue definition of a genuine expense and has been applied for the last three years.

It is not and never has been the Brigade's argument that the change was introduced at the request of the Inland Revenue.

**FBU A; we do not need to respond to this as members already are conversant with the arguments over the refusal to pay their claims, when the change was first imposed in 2006 we made clear through the HVP meetings that this was not acceptable, further ADO's at the time were declining claims stating that the human resources department had advised them that the Inland Revenue had given such a direction not to pay due to tax implications, those who have had claims declined are the best people to ask what info**

was given to them regarding non payment?

**Q:** Isn't the policy in breach of the Grey Book?

**A:** No, it is entirely compliant with the Grey Book conditions of service. The relevant section (section 4, Part E, paragraph 1) explains that an employee shall be reimbursed any "approved additional expenditure". If the claim falls outside the criteria of the Subsistence and Public Transport Expenses policy it is not "approved additional expenditure".

**FBU A;** very good answer by the brigade, however look at it closer!! If it falls outside the policy then the expenditure is not approved, we never agreed the policy they imposed it, therefore this means that the brigade could impose another policy which states that no subsistence will be paid, which would mean that any claim would not be met as it would fall outside of the criteria and therefore be not approved expenditure.

**Q:** Was the policy agreed with the FBU?

**A:** The draft Subsistence and Public Transport Expenses Policy was submitted to the FBU for consultation on 4 July 2005. The FBU were subsequently invited to discuss the policy at a meeting of the Authority Joint Committee on 21 July 2005 but declined to attend. The policy was approved at the Authority meeting (FEP 773) on 15 September 2005. The FBU did not make any observations to the Authority on the report, although they were entitled to do so.

**FBU A;** This is true we never addressed the authority, the brigade were fully aware of our objections yet they proceeded to put the policy to the authority ignoring our views which were still be raised in other forums, specifically the HVP meetings, due to the imposition of an industrial relations machinery which was not negotiated.

**Q:** Is it the case that the FBU did not object to the policy at the time?

**A:** Yes that is correct. The first time this was raised was in 2008, well over two years after the policy was introduced.

**FBU A** again absolute rubbish both the 2<sup>nd</sup> officer at the time (Ron Dobson) and the management team who were leading on the introduction of HVP's were aware of our objections, it was Ron Dobson who arranged for senior manager Nimoy to lead on those meetings and told us to raise our issues in that forum. We have further raised our concerns and objections throughout that period since 2006 regarding non payment and the 3 day normal place of work at informal meetings as we refused to attend the imposed industrial relations forums.

**Q:** Is it true that the five mile and five hour limit was in force when the FBU agreed contracts of employment in 2006?

**A:** Yes, the current subsistence policy came into force in January 2006. In August 2006 the Authority agreed with the FBU to issue agreed contracts of employment to all FBU members employed by the Authority. The contracts provide that employment with the Authority is subject to the provisions set out in the Authority's rules (including personnel notes etc.) in force from time to time. These contracts were issued in October 2006.

**FBU A;** again we repeat that whilst we agreed contracts in Aug 2006 we still had opposed the introduction of the imposed subsistence policy.

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## **Middle managers' camping out arrangements**

**Q:** Is the Brigade seeking to reverse a decades-long protocol for camping out?

**A:** No, a clear contractual requirement has been in place for many years under which officers are required to secure their own standby base in London.

**FBU A;** It is true that when the agreement was reached back in 1984 officers were required to secure their own standby base in London, yet the brigade did not invoke that requirement and instead permitted officers to utilise existing facilities, but now the brigade have tried to invoke that part of the agreement. Contracts also include custom and practice and it is our opinion that the continued use of brigade facilities for camp out bases constitutes such a practice.

**Q:** Was this agreed by the FBU as part of the 2006 contract?

**A:** Yes, it was in earlier contracts and was also included in the contracts of employment agreed with the FBU in 2006.

**FBU A;** this is not correct below is our response sent to AC Brown on 3<sup>rd</sup> Dec 08;

*“There was no collective agreement in 2006 in respect of officers' contracts. When the authority sought - in breach of employment law, I might add - to impose new and inferior contracts on all firefighters, the FBU sought a high court declaration in the name of three members in the role of firefighter, one of whom was employed during the governance of the GLC, one the LFCDA, and one LFEPa. Before the case came to court, the authority relented and withdrew the new contracts. There then followed a period of negotiation, the outcome of which saw agreement on updated contracts. However, these discussions and the ensuing agreement related only to the contracts of those in the role of firefighter, not officer employees.*

*Moreover, none of this negates the fact that where custom and practice has developed over a number of years, such as that which has developed with call-out bases, the practice becomes an "implied term" of the contract and is given due recognition under contract law”.*

**Further to this we also sent the following to AC Brown 11<sup>th</sup> Dec 08;**

*The court order – a copy of which I have – is very clear. It states:*

*That the standard contract of employment in respect of existing uniformed personnel conditioned to duty systems other than the shift duty is consistent with [the standard firefighter contract] attached to this Order, subject to there being different agreed provisions relating to hours and subject to any additional provisions as to matters not covered in the standard contract which may have been expressly agreed with the individuals at the time of their appointment [my emphasis].*

*It is very evident from this that LFEPA does not have the authority to make alterations to the arrangements surrounding call-out bases without first securing the express agreement of the individual. For most flexi duty officers, it cannot be considered that such agreement has been obtained. The advice given by the authority's legal department, therefore, springs either from ignorance or disingenuousness.*

**Q:** How many managers are not compliant with this contractual requirement?

**A:** Less than 7% of managers are still non-compliant (22 out of approx 340) and the numbers are continuing to reduce. The Brigade has let officers know individually that consideration will be given to cases of personal hardship, and in these cases the dates by which officers should comply have been amended accordingly.

At the end of the day it is unfair on the overwhelming majority who do comply for there to be a small number of staff who do not meet their contractual requirements. A: No, a clear contractual requirement has been in place for many years under which officers are required to secure their own standby base in London.

**FBU A;** it is true that those officers have had to undergo embarrassing interviews to ascertain financial hardship, but what is not stated is that the FBU offered an alternative proposal to manage the situation yet this was ignored, whilst there may now only be 22 effected those originally effected exceeded 50.

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## **Area Managers**

**Q:** Is the new DAC role outside the Grey Book?

**A:** Yes, it is part of the Top Management Group which has a separate collective bargaining arrangement to that applying to Grey Book staff.

**FBU A;** this is true.

**Q:** How many area managers/DACs didn't sign the enhanced contract?

**A:** Over 95% of area managers voluntarily agreed to the change.

FBU A; again this true but what the brigade has not said is the commitment that was given to those 5% who refused to undertake the role, the following was stated by Mr Dalglish to the FBU officers rep on 17<sup>th</sup> Aug 2007;

- *How will the new proposals affect those current AM's who do not wish to sign up to the new proposals? What happens to them regarding current role maps, conditions and rota groups?*  
*Mr Dalglish response;*

*“Hopefully this will not be an issue. But clearly were this to happen an employee would remain on their current AM terms and conditions”.*

**Q:** The FBU say the Brigade has decided to delete the Area Manager post. Is this true?

**A:** No the FBU is fully aware that no decision has been made.

FBU A; this may be true but we received the following from Mr Dalglish on 1<sup>st</sup> June 2009 and we ask how you would interpret such a statement?

*“I have considered carefully both your letter and the issues that you have raised at JCMM, but none of these alter the view that there is no longer a need for the single Area Manager post left within the Brigade.*

*I note that you say you have registered a failure to agree at the JCMM, but would advise you that the establishment and its size is a matter for consultation and not negotiation. In this instance it is accepted that the deletion of the post would reduce the Area Manager establishment to zero, but that does not alter the fact that the proposal is a reduction in the establishment of one Area Manager post.*

*It is recognised that the FBU have not agreed any collective agreement in respect of the DAC role, but the DAC role is not covered by the grey book or by the JCF/JCMM.*

*It is the intention to proceed with the deletion of the post as outlined; however, as previously indicated I am happy to receive further representations from you, FOA or the individual affected up to 30<sup>th</sup> June”.*

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## Leave

**Q:** Has the Brigade imposed a detrimental leave policy?

**A:** No. The current policy on annual leave and public holiday leave is designed so that there is no reduction in fire cover. It has long been the expectation that stations will remain self-sufficient in order to maintain our level of service to the public. Our policy requires that sufficient firefighters, crew managers (CMs) and specialist personnel are available to keep all appliances on the run. Firefighters are permitted to act up at one appliance stations to permit the CMs to take leave. The current policy on booking scale B leave, introduced in January 2007, is that it can only be booked one month in advance, although management are looking again at the policy to see whether there can be further flexibility.

Late last year, as an interim step pending consultation on a revised Policy 327, senior

officers were advised that scale B leave could not be booked more than 28 days in advance; consultation on the revised Policy 327 started in mid-January 2009. As a result of the consultation, the 28 day period was extended to six weeks and senior officers were told they could book scale B leave beyond that period once all scale A leave was booked. This outcome was welcomed by the trades unions at the Joint Committee for Middle Managers.

FBU A; in respect of middle managers it is correct that we welcomed the revised policy for that staff group, but when we asked if such a policy was forthcoming for WM's and FF's we were told that consideration would be made for WM's but not for FF's other than the extension to 6wks. Further we have been informed by one appliance stations that FF's have been refused permission to act up for leave but they have been permitted to act up when it suits the brigade for out duties. Those members on stations are best placed to answer the question.

**Q:** What is it that FBU is saying management have imposed?

**A:** As nothing has been changed except by agreement, we don't know what the FBU is talking about.

FBU A; on the issue of leave the brigade simply gave us a document and asked for observations which we did, they then ignored our responses and issued the un amended policy on leave.

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## **Due to service absence and light duties**

**Q:** What is the dispute about due to service (DTS) sickness recording arrangements?

**A:** The Brigade has no idea. The FBU have not raised any dispute with the Brigade on this matter and yet it is part of the dispute on which they are balloting for industrial action.

FBU A; we have discussed this issue at the JCMM as members are constantly contacting us stating that DTS injuries or sickness are being re defined as NDTS. This issue was first raised with AC Brown on 15<sup>th</sup> Jan 2009, and despite assurances given members are still reporting that their injuries are being re-classified, further evidence from half and nil pay appeals suggests that the brigade are ruling some injuries DTS for pay but not for recording purposes.

**Q:** Does the Brigade record staff absence as Not Due to Service when an employee is injured on duty?

**A:** No, the Brigade has confirmed to the FBU that staff absent as a result of an injury received in the exercise of their duties as a firefighter, without their default, will have

their sickness recorded as due to service. The FBU have thanked the Brigade for this confirmation.

FBU A; this is true we received such an assurances in Jan 2009, yet members are still reporting that their injuries are being re-classified, further evidence from half and nil pay appeals suggests that the brigade are ruling some injuries DTS for pay but not for recording purposes.

**Q:** Are staff forced to return to work under threat of reductions in pay?

**A:** No one is forced to return to work under threat of half or nil pay. If people are unfit to do any work, they should remain on sick leave. There is a contractual entitlement to six months full sick pay (12 months if DTS) and six months half sick pay; this has been the case for many years. Clearly if sickness extends beyond these terms, there may be sick pay reductions in line with the contractual entitlements.

FBU A: we strongly disagree members who are unable to return to work because their injuries or sickness exceed the authority policy are told that they will be placed on half or nil pay, yet the policy does not say that those members should incur such a penalty, the brigade can exercise discretion when reducing pay yet they only use half or nil pay, members cannot afford such a reduction so they return often when not fully fit.

**Q:** Do employees returning on light duties have their pay reduced by 20%?

**A:** No, full pay is maintained. Light duties are designed as a step towards returning to full duties for those staff returning to work who need a rehabilitation plan to enable them to return to full operational fitness. There is provision for pay to be reduced to 80% if light duties extend beyond six months. That reduction would have to be by agreement with the individual. To date this provision has not been used.

FBU A; it may be correct that the provision to reduce pay by 20% has not yet been utilised, this is because no one has agreed to such a reduction.

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## Targeted Calling

**Q:** Is the Brigade routinely abusing the Brigade's policy on targeted calling?

**A:** No, it has not been abused at all by managers. It will normally only be used as a final option when all other options have been either considered and rejected as impractical or tried and found to be unsuccessful.

FBU A; the answer lye's in the brigade response above, **normally** but members know themselves how often the targeted policy is abused, we do not need to offer any further answer to this.

**Q:** Does the Brigade consult properly on targeted calling exercises?

**A:** Borough commanders are fully aware of the need to consult locally with crews to ensure their knowledge of the area to be targeted is taken into account as well as consulting locally-appointed staff side health and safety representatives. Normally a period of seven working days is considered sufficient for this health and safety consultation.

FBU A; again the answer lye's in the brigade response above, **normally** but members know themselves how often the targeted policy is not been subjected to the correct consultation or risk assessments, we do not need to offer any further answer to this.

**Q:** What has management done in response to alleged breaches of the policy?

**A:** Brigade management has asked the FBU to bring management's attention to each and every instance where they believe the policy has been contravened, and have given an undertaking it will intervene to ensure the policy is adhered to. To date only two such breaches of the policy have been identified by the FBU. In those cases, Brigade management have acted to ensure the policy is followed.

FBU A; this may be correct formally we have only ever raised a couple of issues this because we often raise the matter directly with BM's/SM's or we have had to deal with the matters outside of the scheduled joint meetings. Again members will be aware within their own boroughs of the associated problems of using the targeted calling policy to meet targets on HFSV's, such a use is often not as a last resort but instead as a first resort. Members know this to be the case. The following was sent to AC Webb on 6<sup>th</sup> March 2009;

*“The fact remains that to date not one borough manager or other responsible officer has carried out a risk assessment and provided all the information required within the terms of the policy. We are of the view that Borough managers have not carried even a visual DRA let alone a written one. This has been confirmed by two of our members who are Borough managers, and in fact they have been told that there is no need to carry one out”.*

**Q:** The FBU say the Brigade has introduced management guidance without agreement. Is this true?

**A:** No, we have asked the FBU to provide this guidance as we haven't seen it.

FBU A; we will produce the evidence at a future joint committee.

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## Other Issues

### Working Patterns

**Q:** What is the current position on shift changes?

**A:** The Brigade is committed to improving workplace efficiency and it wishes to talk to the FBU with a view to reaching agreement on this matter. Meetings with the FBU to deal with the Brigade's proposals have been set up, and the outcome will be reported back to the Authority at its meeting in September.

The FBU says it remains utterly opposed to 12 hour shifts and that it is very well placed to resist their introduction industrially.

It is unfortunate that the FBU was threatening industrial action prior to even talking with the Brigade. This confrontational approach is the opposite of their claimed "sensible and moderate approach" to industrial relations and their claim to try "to reach agreement where we can."

The FBU refused to attend the most recent meeting of the working group scheduled for 16 July.

**FBU A:** this is true, we made clear that members did not want 12hr shifts in 2006, our members voted in the brigades own consultative ballot which was boycotted and returned to us which delivered a 98.5% mandate not to accept 12 hrs shifts. As for the most recent meeting this is false we failed to meet due to the brigade's immature behaviour in blocking our emails which required us to meet urgently to seek alternative ways to keep our members up to date on issues.

**Q.** If consultation is not completed by the September meeting of the Authority will that mean that the issue will be deferred?

**A:** No, the outcome of discussions will be reported back to the Authority so that it can make decisions on the next steps. Refusing to attend meetings just limits the opportunity to influence and change the outcome.

**FBU A;** again we have not refused to meet with the brigade we are committed to attend scheduled meetings, in fact we have already agreed that should one meeting be cancelled then an alternative date would be utilised, which has already been agreed with the brigade.

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### 2009 Pay

**Q:** What is the current position on the pay increase scheduled for 1 July 2009?

**A:** The Unions are consulting their members on an offer of 1.25% from 1 July. The outcome is expected by the end of the month and if it is accepted payment will be made in August.

**FBU A; this is true.**

## **London Weighting Allowance**

**Q:** Why was the 2008 London Weighting increase imposed?

**A:** The Brigade offered the Unions 2.45% on 2 July 2008. This offer was in line with pay settlements agreed nationally by the FBU and FOA. Unfortunately the unions did not accept the offer which could have been implemented in July 2008. The Authority did not have to implement the 2.45% in January 2009 as there was no trade union agreement, but considered further delay to be unfair on employees who had already had to wait over six months.

**FBU A; this is true the reason the unions did not accept the offer is that we believe that LWA is not connected to national pay discussions or outcomes, it is a locally agreed increase and as such is stand alone from national pay awards.**

**Q:** What is the position on London Weighting for 2009?

**A:** A claim was received from the trades unions for London Weighting to be increased by 4.6% (this is higher than any of the trades unions are seeking on general pay increases for this year). Management offered the trades unions 1.25% in a letter dated 19 June. This was rejected by the trades unions at a meeting held on 8 July.

**FBU A; again this is true, we rejected the offer because again the offer was based on national pay outcomes.**

**Q:** Why did management not consider the research commissioned by the trades union in support of the claim?

**A:** Because the unions have refused to provide it and the unions demanded an offer before the end of June.

**FBU A; again this is true, we commissioned an independent consultant to report on LWA increase for 2009, but we was not prepared to disclose that content until an offer was made by the brigade, we are now more than happy to share that information and will do so at the next AJC.**

**Q:** Why has management withdrawn their offer?

**A:** Because the offer was rejected.

**FBU A; this is true.**

**Q:** What happens next?

**A:** The trades unions have been asked to provide their research if they want it to be taken into account. If it is provided, it will be duly considered by management. If it is not forthcoming, the Authority will do so on 23 July.

**FBU A; the FBU will be disclosing that research at the next scheduled AJC.**

We appreciate that the responses above are lengthy; however it is right that members have both sides of the arguments to be able to make an informed decision.

Farternally Yours

*Ian Leahair*

Ian Leahair  
FBU Executive Council Member for London